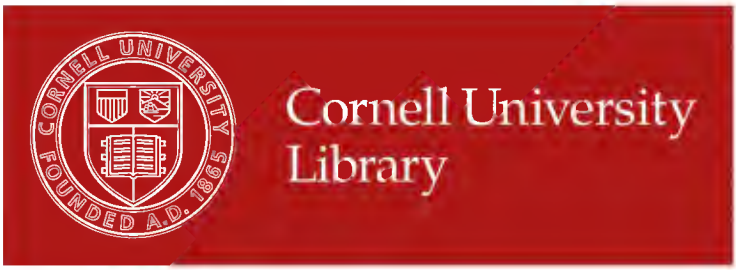

REPORTS

OF

CASES

CIVIL AND CRIMINAL

IN THE

UNITED STATES CIRCUIT COURT

OF

THE DISTRICT OF COLUMBIA,

FROM 1801 TO 1841.

IN SIX VOLUMES.

By WILLIAM CRANCH,

CHIEF JUDGE OF THE COURT.

VOLUME VI.

GENERAL INDEX.

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WASHINGTON:
WILLIAM M. MORRISON AND COMPANY.
1853.

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GENERAL INDEX.

GENERAL INDEX.

ABANDONMENT.

1. The mere stranding of a ship on a bar will not, of itself, justify an abandonment; and the master and crew are bound to use their best exertions to get her off. *Howland* v. *Marine Insurance Company*, ii. 474.
2. If the stranding was of such a character as to render it, in good judgment, hopeless to get the vessel off, then the abandonment was justified, and the loss was within the policy. *Ibid.*
3. An offer to abandon the insured vessel, made as soon as the insured obtains the preliminary proofs of loss, to be laid before the underwriters, is not too late. *Gardner* v. *The Columbian Insurance Company*, ii. 550.

ABATEMENT.

1. If one of two joint partners or contractors, issued alone on a joint contract, he must plead it in abatement. *Clementson* v. *Beatty*, i. 178.
2. The writ is not abated by substituting the assignee as plaintiff in place of the bankrupt. *Wise* v. *Decker*, i. 190.
3. After office judgment set aside by a general appearance, the defendant may plead in abatement that the *capias* was not properly served. *Knox* v. *Summers*, i. 260.
4. To support a plea in abatement, for not naming all the joint promisors, it is not necessary for the defendant to prove that the plaintiff knew that he was dealing with a copartnership. *Norwood* v. *Sutton*, i. 327.
5. The expiration of the charter of the Bank of the United States abated all suits then pending in the name of the president and company of that bank. *Bank of the United States* v. *McLaughlin*, ii. 20.
6. Case will lie for use and occupation of land in Virginia, but all the joint tenants, or tenants in common, interested with the plaintiffs must be joined as plaintiffs in the action; and if they are not, the defendant may take advantage of the omission, without pleading it in abatement. *Newton & Muncaster* v. *Reardon*, ii. 49.
7. The Court will not receive a plea in abatement that there are other defendants not taken, unless it be put in on oath. *Edmondson* v. *Barrell*, ii. 228.
8. *Quære*, whether the misnomer of a body corporate must be pleaded in abatement? *Central Bank, Georgetown*, v. *Tayloe*, ii. 427.
9. A plea of misnomer in abatement is too late after the expiration of the rule to plead. *Brooklyn White Lead Co.* v. *Pierce*, iv. 531.
10. It is no ground for a plea in abatement of the indictment, that one of the grand jurors had previously expressed an opinion that the defendant was guilty of the offence. *United States* v. *Richard H. White*, v. 457.
11. A plea in abatement, not upon oath, may be treated as a nullity. *Fenwick* v. *Grimes*, v. 603.
12. A plea in bar, overrules a plea in abatement. *Ibid.*
13. The order of pleading is part of the common law, and does not depend upon a mere rule of the court. *Ibid.*

ABSENT DEBTOR.

1. Upon a chancery attachment in Alexandria county, D. C., against the effects of an absent debtor, the garnishee, residing in Alexandria county, is not liable to the plaintiff, for goods of the defendant which are in the custody of the garnishee in Virginia, where the debtor himself resides. *Miller & Son* v. *Hooe & Janney*, ii, 622.
2. If the resident garnishee, is not indebted to the defendant, and has no effects of the defendant in his possession in this district, and the defendant himself is not found in the county of Alexandria, no decree can be rendered against either the garnishee, or the debtor, and the bill must be dismissed, as the Court has no jurisdiction in the case. *Ibid.*

ACCESSORY.

There cannot be an accessory, at common law, to an offence which does not amount to felony. *United States* v. *Williams*, i. 174.

ACCIDENT.

A casualty, happening against the will and without the negligence or other default of the party, is, as to him, an inevitable casualty. *Hodgson* v. *Dexter*, i. 109.

ACCOMMODATION.

1. The indorsement of a note is evidence of money had and received by the defendant for the plaintiff's use, although the note was indorsed by the defendant for the accommodation of the maker. *Bank of Alexandria* v. *Wilson*, ii. 5.
2. The plaintiff's counsel may fill up the blank indorsement at the trial, although the indorsement was for the accommodation of the maker of the note. *Ibid.*

ACCOUNT.

1. If after the jury is impanelled and sworn, it appear to be a case in which it is necessary to examine and determine upon accounts between the parties, the Court will order the jury to be discharged, and the accounts to be audited and stated by the auditor of the Court, agreeably to the Maryland Act of 1785, c. 80, § 12. *United States* v. *Rose*, ii. 567.
2. The creditors of the insolvent estate of a deceased debtor, have a right to contest the settlement of the executor's account, before the Orphans' Court, and to appeal from its decision to this Court. *Nichols et al.* v. *Hodge's Executor*, ii. 567.
3. What is not excepted to, will be considered, at the trial, as admitted. The party excepting to the report will, at the trial, have the same benefit, to the extent of his exceptions, as he would have had if he had formally pleaded or demurred before the auditor, according to the English forms of proceeding in actions of account. The auditor's report is of no avail, but to ascertain the points really litigated by the parties. *Barry* v. *Barry*, iii. 120.
4. Items of partnership account cannot be recovered in a suit at law by one partner against the other, if the joint concerns have not been settled. The accounts current rendered by each to the other are admissible in evidence to show, by the admissions of the parties, that the items are not items of partnership account. *Ibid.*
5. In an action upon an open account, the plaintiff may give evidence of any item of which the defendant has had reasonable notice; and the exhibiting and filing a claim for a particular item before the auditor will be considered as reasonable notice of such claim. *Ibid.*
6. The proceedings in equity in a cause in which the present plaintiff and defendant are parties, may be read in evidence to show that the defendant had charged to another account some of the articles charged to the plaintiff, in the present action. *Ibid.*

ACCOUNT, (*continued.*)

7. If an account current be received and kept without objection, except as to particular items, the person so receiving it may still surcharge and falsify as to other items. *Ibid.*
8. If an account be received, and not objected to for several years, the jury may infer that it is correct. *White* v. *Macon*, iii. 250.
9. If one of the counts be "for matters properly chargeable in account according to the account therewith filed," agreeably to the Maryland practice; and there be no account filed, and non assumpsit be pleaded to all the counts, the plaintiff may give evidence upon that count, the defendant having, by his plea, waived the objection to the same. *Semmes* v. *Lee*, iii. 439.
10. It is competent for the Court to admit evidence of equitable claims against the United States, which have been rejected by the accounting officers of the Treasury. *United States* v. *Fitzgerald*, iv. 203.
11. An account, although duly authenticated according to law, is not, *per se* evidence of a balance due on a former account, nor of items transferred from the account of another person; nor of items recharged which had been before credited. *United States* v. *Kuhn*, iv. 401.
12. From the fact that the defendant objected to certain items of debit, in the account, and was silent as to the other items, the jury may, and ought to infer that he acquiesced in the items not objected to; unless they should be satisfied that he did not so intend; the burden of proof of which is on the defendant. *Ibid.*
13. The jury may infer that the defendant claimed no credits but such as are stated in the "reconcilement," and ought so to infer unless the defendant can show that there were other credits claimed by him, or to which he is entitled. *Ibid.*
14. If the United States produce in evidence the defendant's account current, showing a balance in his favor, he is entitled to a verdict unless the plaintiff should prove errors or omissions in that account which would turn the balance the other way. To rebut such *primâ facie* evidence, it is not sufficient to show that certain claims of the defendant were suspended by the proper accounting officers, on the coming in of the account current containing them, and were subsequently disallowed by any Secretary of the Navy. *Ibid.*
15. An account allowed by order of the Secretary of the Navy for the time being, is not rebutted by showing that it was afterwards disallowed by a subsequent Secretary. *Ibid.*
16. In order to rebut the *primâ facie* evidence arising from the production and giving in evidence, by the United States, of the defendant's account containing the charge, it is incumbent on the United States to satisfy the jury that the charge was such as the Secretary of the Navy ought not to have allowed. *Ibid.*
17. The Court instructed the jury, in effect, that if the Secretary of the Navy did not direct the Fourth Auditor to allow the specific sum claimed, but only to make such allowance as on examination he should find to have been made in similar cases, they should, from a consideration of all the evidence, make such allowance as they should find had been usually made in similar cases; and if it should appear that no such allowance had been made in any similar case, then to make such as they should deem reasonable.

And the Court further instructed the jury, in effect, that the Secretary had a right to order the Fourth Auditor to make such allowance, and if made by him, it was equivalent in law to an actual allowance by the Secretary himself.

And further, that if the Secretary did authorize the allowance of the claim,

ACCOUNT, (*continued.*)
and the accounting officers omitted to pass the same, without any default of the defendant, then the defendant is entitled to such allowance, unless it was made by fraud, imposition, or misapprehension of the facts of the case. *Ibid.*

18. The paymaster of the marine corps was not by law entitled to the pay of a major in the general staff, nor of a major in the cavalry from November, 1821, to October, 1830.
Up to the year 1828 he had received the pay and emoluments of a major in the infantry, and this was continued to him until 1831, by the Resolution of May, 1830. *Ibid.*
19. After a credit has been given by the United States, and the account settled, it is not competent for the United States to open the account and revoke such credit, unless it were originally given by fraud, imposition, or mistake. *Ibid.*
20. The account annexed to the declaration need not be such as is *per se* evidence under the Act of Maryland of 1729, c. 20. *McLaughlin* v. *Turner*, i. 476.
21. A set-off or account in bar must be filed one term before the trial in Alexandria. *Janney* v. *Baggatt*, i. 503.
22. On a count "for sundry matters properly chargeable in account," the plaintiff may give evidence of money lent, although no account was filed or annexed to the declaration. *Lovejoy* v. *Wilson*, i. 102.

ACKNOWLEDGMENT.
1. The execution of a deed of land in Washington, (D. C.) need not be proved by the witnesses, if it be acknowledged and recorded. *Edmondson* v. *Lovell*, i. 103.
2. A deed of land in Maryland acknowledged by the grantor before two justices of the peace of the county, in Maryland, in which the grantor then resided, not being the county in which the land lies, is not properly recorded under the Act of 1766, c. 14, unless there were indorsed on the deed a certificate of the clerk of the county, under the seal of the Court, that the two justices were, at the time, justices of the peace of that county, and such certificate recorded with the deed. *Milligan* v. *Mayne*, ii. 210.
3. The Superintendent of the city of Washington was authorized by law to take the acknowledgment of deeds of land within the city. *Peltz* v. *Clarke*, ii. 703.
4. In 1823, the Commissioner of Public Buildings in the city of Washington had authority to take the acknowledgment of deeds of land in the county of Washington, D. C. *Middleton* v. *Sinclair*, v. 409.

ACTION UPON THE CASE.
1. A person who has the right to do an act, has a right to use the necessary means. *Hooe* v. *Corporation of Alexandria*, i. 98.
2. The principal is liable for the conduct of his agent while acting in his employment, although he act without or contrary to his order. *Ibid.*
3. Full costs are allowed upon a verdict for one cent damages, in an action upon the case for raising the level of a street. *Ibid.*
4. In an action upon the case against a deputy-postmaster for negligence, the instructions of the Postmaster-General may be given in evidence. *Dunlop* v. *Munroe*, i. 536.
5. A deputy-postmaster and his clerks are only bound to use such care and diligence in the discharge of their duties as a prudent man exercises in his own affairs. *Ibid.*
6. Deputy-postmasters are civilly liable for the acts of their servants and clerks; but the neglect of the servant or clerk cannot be given in evi-

ACTION UPON THE CASE, (*continued.*)
dence upon a count charging the loss to have been incurred by the neglect of the deputy-postmaster himself. *Ibid.*
7. A justice of the peace is not liable in an action for false imprisonment under an illegal warrant issued by him, unless it be issued maliciously. *Neale* v. *Minifie*, ii. 16.
8. In an action upon the case for maliciously contriving to deprive the plaintiffs of their slaves, it is necessary for them to prove malice in the defendant; and it is competent for the defendant to show probable cause, and the want of malice. *Lewis et al.* v. *Spalding*, ii. 68.
9. An action upon the case will lie for the loss of the plaintiff's slave, although the defendant wrongfully and unlawfully acquired and kept possession of the slave. *Washington* v. *Wilson*, ii. 153.
10. An action upon the case will lie against a corporation aggregate for damage done by its agents, ignorantly or negligently; but not if done by the agent knowingly and wilfully. It is not necessary that it should be done under any by-law, or order to the agent. If done by the previous authority or subsequent assent of the corporation, it is liable. *Pritchard* v. *Corporation of Georgetown*, ii. 191.
11. In an action upon the statute of Virginia, for carrying away the plaintiff's slave, evidence will not be permitted to be given that the slave had hired himself as a free man to another master of a vessel in a previous voyage. *Washington* v. *Wilson*, ii. 153.
12. The reversioner cannot maintain an action upon the case against a stranger who, by persuasion or threats, induces the tenant to attorn to a third person; it not being done maliciously. *Brown et al.* v. *Corcoran*, v. 610.

ADDITION.
The addition, "clerk," to the name of the defendant, is not a sufficient averment that he was, at the time of the marriage, a minister duly authorized to celebrate that rite. *United States* v. *McCormick*, i. 593.

ADJOURNMENT.
An adjourned term is an extension of the preceding session; and the court has no jurisdiction, at an adjourned term, over office judgments rendered between the original and the adjourned term. *Memorandum*, i. 159.

ADMINISTRATION.
1. The declaration need not state by whom the letters of administration were granted. *Cawood* v. *Nichols*, i. 180.
2. Although the plaintiffs name themselves administrators, yet, if they have not made *profert* of their letters of administration, they are not bound to give oyer of them. *Mason* v. *Lawrason*, i. 190.
3. Administrators are bound to plead before the expiration of the year. *Buckley* v. *Beattey*, i. 245.
4. An administrator in Alexandria county, has a right at law to give a preference to a creditor by confessing a judgment, and a court of equity will not interfere by injunction. *Wilson* v. *Wilson*, i. 255.
5. The administrator of appearance-bail cannot be allowed to appear as appearance-bail, and plead for the principal. *Finley* v. *McCarthy*, i. 266.
6. A defendant who obtained letters of administration in the State of Virginia before the District of Columbia was separated from it, cannot, in a suit in the district, after its separation, sustain the plea of "never administrator." *Courtney* v. *Hunter*, i. 265.
7. A promise by an administrator, in consideration of assets, is a promise as administrator, and the judgment is *de bonis testatoris*. *Ibid.* *Faxon* v. *Dyson*, i. 441.

ADMINISTRATION, (*continued.*)

8. If the sureties of an administratrix reside out of the district, a *ne exeat* will be granted to restrain her from moving away with the goods of the deceased, before final settlement of her administration accounts. *Patterson* v. *McLaughlin*, i. 352.
9. An action will not lie against the sureties in an administration-bond until the plaintiff shall have proved his debt and a *devastavit* in an action against the administrator. *Gilpin* v. *Oxley*, i. 568. *Gilpin* v. *Crandell*, ii. 57.
10. In suits in equity against executors and administrators, in Virginia, a lawyer's fee is not to be taxed. *Arrell* v. *Marsteller*, ii. 11.
11. Under the Act of Maryland, 1798, c. 101, c. 8, § 15, the Court, and not the jury, is to ascertain whether the defendants paid away all the assets before notice of the plaintiff's claim. *Hellen* v. *Beatty*, ii. 29.
12. A surety in an administration-bond is a competent witness for the administrator. *Thompson* v. *Afflick*, ii. 46. *Davies* v. *Davies*, ii. 105. *Craig* v. *Reintzel*, ii. 128. *Burch* v. *Spaulding*, ii. 422. *Young* v. *Mandeville*, ii. 444.
13. A declaration upon a promise made by the defendant must aver assets, in in order to charge him personally *de bonis propriis*. *Adams* v. *Whiting*, ii. 132.
14. An executrix has a right to appeal from a sentence of the Orphans' Court, to this Court, without giving security to prosecute the appeal with effect, and this Court will grant a *mandamus* accordingly. *Deneale* v. *Young*, ii. 200.
15. There can be no judgment in Washington county against an executor or administrator for a debt of the testator or intestate, until the Court shall have ascertained the assets and assessed the sum for which the judgment shall be rendered against the executor or administrator *de bonis propriis*. *Bank of Washington* v. *Peltz*, ii. 241.
16. A purchaser under a power given by will to the executor to sell real estate for payment of debts, is not bound to see that the purchase-money is properly distributed among the creditors. *Greenway* v. *Roberts*, ii. 246.
17. A justice of the peace has no jurisdiction of an action against an administrator. *Ritchie* v. *Stone*, ii. 258.
18. Where the defendant is an administrator, the Court will permit him to plead the statute of limitations at the trial term; to which plea the plaintiff can make only one replication. *Offutt* v. *Hall*, ii. 363.
19. If a suit be brought originally against an administrator, and he die *pendente lite*, the administrator, *de bonis non*, may be compelled to appear to defend the suit. *Owen* v. *Blanchard*, ii. 418.
20. Under the Act of Congress for extending the jurisdiction of justices of the peace, a justice of the peace has not jurisdiction of suits against administrators. *Adams* v. *Kincaid*, ii. 422.
21. An administrator, *de bonis non*, cannot support an action in his own name, for the price of goods of his intestate, sold by the previous administrator. *Calder* v. *Pyfer*, ii. 430.
22. If the administrator of a surety in a collector's bond, pay away the assets of his intestate in payment of the intestate's debts before notice of the claim of the United States, such payment is is not a *devastavit*. *United States* v. *Ricketts*, ii. 553.
23. The creditors of the insolvent estate of a deceased debtor, have a right to contest the settlement of the testator's account before the Orphans' Court, and to appeal from its decision to this Court. *Nichols* v. *Hodge*, ii. 582.
24. The amount of compensation to be allowed to the executor for his services in settling the estate, within the limits of five and ten per cent. on the inventory, is a matter within the exclusive cognizance of the judge of the Orphans' Court; and while his order on that subject remains un-

ADMINISTRATION, (*continued.*)
repealed, it is conclusive against the creditors, and cannot be controverted upon *plene administravit*. *Ibid.*
25. A claim by the executor, as a creditor of the estate, cannot be controverted by the other creditors before the Orphans' Court. That court has no definitive jurisdiction between contending creditors. *Ibid.*
26. If the administratrix of her deceased husband sell the goods, and take notes payable to herself personally, and bring suit on one of the notes and die, and her administrator enter his appearance in the suit, and obtain judgment; the Court will not order the judgment to be entered upon the docket for the use of the administrator *de bonis non* of the husband, unless he can show that the sureties of the administratrix are insolvent, and that the balance of the administration account is against her. *Mary Ann Magruder's case*, ii. 626.
27. In an action upon the administration-bond, for a distributive share of the estate, the administrator may retain, for necessaries furnished to the distributee. *United States* v. *Ritter*, iii. 61.
28. In a declaration, by an administrator, upon a bond to his intestate, he must aver himself to be administrator, and make *profert* of his letters of administration. *Fugate* v. *Bronaugh*, iii. 65.
29. The Orphans' Court for the county of Alexandria, has no authority to order the marshal to administer the estate of any deceased person. *Ex parte T. Ringgold*, iii. 86.
30. The plaintiff is bound to give oyer of his letters of administration, whenever demanded, before the expiration of the rule to plead. *North* v. *Clark*, iii. 93.
31. An action cannot be maintained, in Washington county, (D. C.) upon the administration-bond of an executor, for not giving in a claim against himself, until the claim has been established in the Orphans' Court, according to the Maryland testamentary law of 1798, c. 101, c. 8, § 20. *United States* v. *Rose*, iii. 174.
32. Upon trial of the issue, upon non assumpsit, in an action by an administrator, he need not produce his letters of administration. *Wise* v. *Getty*, iii. 292.
33. If a debt due by an executor to his testator be not barred by the statute of limitations at the time of the death of the testator, the executor is bound to give in the claim in the list of debts; and the statute of limitations ceases to run in favor of the debtor from the time of his accepting the trust as executor. *Wilson* v. *Rose*, iii. 371.
34. The Act of Maryland of 1720, c. 24, respecting suits upon administration-bonds before the return of *non est*, or *nulla bona*, against the executor or administrator, is in force in the county of Washington, (D. C.) *United States* v. *Queen*, iii. 420.
35. An executor may be allowed credit for a loss upon the sale of stocks, although the sale should have been made without the order of the Orphans' Court. *Ex parte Jones*, iv. 185.
36. In the administration of the estate of a deceased person, debts are always to be paid according to their respective dignity as regulated by the law of the country where the representative of the deceased acts, and from which he derives his powers; not by the law of the country where the contract was made. *Union Bank, Georgetown*, v. *Smith*, iv. 21.
37. In the administration of the estate of a deceased person in the county of Washington, (D. C.) a judgment of a justice of the peace is not on a par with the judgments of a court of record, and is not entitled to priority of payment. *Bettinger* v. *Ridgway*, iv. 340.
38. Money received by the defendant, for the estate of the intestate in the lifetime of the first administrator, may be recovered as assets in an action by a subsequent administrator. *Blydenburgh* v. *Lowry*, iv. 368.

ADMINISTRATION, (*continued.*)

39. Letters of administration granted by the surrogate of Suffolk county, in New York, upon *bona notabilia* found there, will enable the administrator to recover assets in the District of Columbia under the Act of Congress of June 24, 1812, § 11. *Ibid.*
40. The Orphans' Court may charge the administrator with interest in certain cases. *Union Bank, Georgetown*, v. *Smith*, iv. 509.
41. No creditor can maintain an action against the administrator of his debtor upon his administration-bond before a *non est*, returned upon *a capias ad respondendum* against the administrator, or a *fi. fa.* returned *nulla bona*, or other apparent insolvency. The Maryland Act of 1720, c. 24, § 2, is in force in the county of Washington, (D. C.) *United States* v. *Kennedy*, iv. 592. *United States* v. *Shaw*, iv. 593.
42. Letters testamentary granted without security, agreeably with the will of the testator, may be revoked by the Orphans' Court, upon the petition of creditors. *Laird* v. *Dick*, iv. 666.
43. A justice of the peace has not jurisdiction of an action against an executor, and money paid by the defendant in such a case, while in commitment upon a *ca. sa.*, issued upon the judgment of the justice, was money paid by duress, and may be recovered in an action for money had and received. *Foy* v. *Talburt*, v. 124.
44. The Orphans' Court for the county of Alexandria, has authority under the law of Virginia, to regulate and fix the compensation of an executor in settling the estate; and for that purpose may order an inventory and appraisement; although the will directs that no inventory shall be taken. *Atkinson* v. *Robbins*, v. 312.
45. The rights of the parties under the will are to be decided by the law of Virginia; the powers and jurisdiction of the court are to be ascertained by the law of Maryland, referred to by the Act of Congress, erecting the Orphans' Court. *Ibid.*
46. If a sealed note be given to R. H. F., one of the executors of Thomas Whittington, it is not necessary that all the executors should join in the action. *Foote* v. *Noland*, v. 399.
47. The settlement of an administration account by the Orphans' Court is conclusive upon this Court against distributees and residuary legatees, except by appeal; although not conclusive against creditors upon a question of *devastavit*, or *plene administravit*.

    It is a part of the ordinary duty of the Orphans' Court to ascertain and deliver the surplus, or residuum of the estate of a deceased person; and for that purpose to settle the administration account.

    The jurisdiction of that court, in that matter, is original, peculiar, and exclusive.

    An original bill, in the Circuit Court, to compel an executor to account with a residuary legatee, and not necessarily connected with any other ground of equitable jurisdiction, is a bill asking that court to do what originally belongs exclusively to the Orphans' Court to do. The Circuit Court has not jurisdiction of such an original bill. *Lupton* v. *Janney*, v. 474.
48. A court of equity will not lend its aid to enforce an unconscientious claim. *Ibid.*
49. It is a matter within the discretion of an executor whether he will incur the expense of a suit against a known insolvent debtor of the estate. *Ibid.*
50. Mere lapse of time is not alone a bar to the opening of an executor's accounts, but long acquiescence in the settlement of an administration account may make it against conscience to seek to open it. *Ibid.*
51. An administrator appointed in Kentucky, who has received, in the District of Columbia, money belonging to the estate of his intestate, cannot by a bill in equity be compelled to account for and distribute the same to the

ADMINISTRATION, (*continued.*)
next of kin, citizens of, and residing in, Virginia, although the administrator should be found in the District of Columbia. *Vaughan* v. *Northup*, v. 496.
52. *Quære*, whether a foreign administrator can be sued as such, and held to account in the District of Columbia for assets there received. *Ibid.*
53. Letters of administration, with the will annexed, granted in the District of Columbia, while there was an executor acting under letters testamentary granted in Maryland, are void. *Paul* v. *Kane*, v. 549.
54. If the executors inadvertently pay to some of the legatees, more than their shares of the residuum, and to other of the legatees less than their shares, and the estate is not sufficient to make good the deficiency, the executors must suffer the loss, or look for reimbursement to the legatees who have been overpaid. *Moffit* v. *Varden*, v. 658.

AFFIDAVIT.
1. An account charging the defendant "to goods per bill $91,89," with an affidavit that "the above account is just and true," is not sufficient to hold the defendant to special bail. *Bartleman* v. *Smarr*, ii. 16.
2. An affidavit "that the within account is just and true as stated," is not sufficient. *Travers* v. *Hight*, ii. 41.
3. In an action against two defendants upon the promissory note of one of them, an affidavit by an indifferent witness, that the other defendant acknowledged that he was a partner and equally liable for the debt, is sufficient to hold him to bail. *Miller* v. *Wheaton & Briscoe*, ii. 41.
4. An affidavit "that the above account as stated is just and true, and that the plaintiff has not received any part, parcel, or satisfaction for the same;" but does not say that the plaintiff had received no security, is sufficient to hold the defendant to bail. *Young* v. *Moriaty*, ii. 42.
5. The affidavit of a plaintiff, who has been discharged under the Insolvent Act, that the account is just and true as stated, and that he has received no part thereof, &c., must be accompanied by a similar affidavit by his trustee under the Insolvent Act, or bail will not be required. *Way* v. *Selby*, ii. 44.
6. The affidavit to continue a cause on the ground of absence of a witness, must state that the affiant believes that the cause cannot be tried with safety to him without the attendance of the witness. *Union Bank of Georgetown* v. *Riggs*, ii. 204.
7. Upon an attachment issued by a justice of the peace under the Virginia Act of December 26th, 1792, § 6, if the plaintiff's claim arise in part upon a note of the defendant taken up by the plaintiff, who was the indorser, the plaintiff's affidavit is not sufficient evidence of the debt without producing the note. *Mills* v. *Wilson*, ii. 216.
8. In order to obtain an attachment under the Maryland Act of 1795, c. 56, the affidavit must be positive as to the amount of the debt. *Munroe* v. *Cook*, ii. 465.
9. The Court has a discretion, upon the motion to change the venue, and will not, in general, change it, unless the suggestion be accompanied by an affidavit stating the grounds of belief that an impartial trial cannot be had in the county in which the suit is instituted. *Lewis* v. *Fire Insurance Company*, ii. 500.
10. The affidavit of the President of the Bank of Columbia, made under the 14th section of its charter, stating "that the note was not paid when due, according to the best of his knowledge and belief," and that the sum of ——— remained due upon the note, is sufficiently certain although he does not state that it remained due by the defendant, nor that the defendant is the person who signed the note. *Bank of Columbia* v. *Cook*, ii. 574.

AFFIDAVIT, (*continued.*)

11. An affidavit of the plaintiff's, written on the back of a copy of the charter-party and annexed to an account current, which states the particular charge with dates, &c., and averring that "there is due and unpaid upon the original charter-party, of which the within is a true copy, $2,433.06, the whole amount of the said charter being $3,212.96, of which $779.90 have been paid agreeably to the account current by us signed and hereunto annexed, which exhibits the true and perfect state of the demand now existing between the said Simonton and ourselves," is sufficiently certain to hold the defendant to bail in an action of covenant on the charter-party. *Winter* v. *Simonton*, ii. 585.
12. In an action upon the case for selling negroes out of the neighborhood, contrary to agreement, the defendant will not be held to special bail upon an affidavit stating the breach of the agreement, and the belief of the plaintiff that he has sustained damage to a certain amount. *Young* v. *Palmer*, ii. 625.
13. An affidavit to hold to bail for a malicious arrest must state that the action, in which the plaintiff was arrested, is determined. *Barrell* v. *Simonton*, ii. 657.
14. An affidavit of notice may be made and sworn to before the counsel of the party, and may be wholly in his handwriting. *Atkinson* v. *Glenn*, iv. 134.
15. An affidavit, annexed to an account, that "it is just and true as stated, and that no part thereof has been paid, except what is credited," is sufficient to hold the defendant to bail. *Clark* v. *Druet*, iv. 142.
16. It is not a valid objection to an affidavit to hold to bail, in slander, that the plaintiff therein states that he is credibly informed and verily believes that the defendant spoke the words; the affidavit being positive that the plaintiff had thereby sustained damage to the amount of $5,000. *Stettinius* v. *Orme*, iv. 342.
17. Upon a suggestion that a witness, whose affidavit had been taken in support of a motion for a new trial, was an idiot, the Court required the witness to be brought in and examined in court; but refused to order another witness, whose affidavit had also been taken for the same purpose, to be brought in and examined, his affidavit not being impeached. *United States* v. *R. B. Lloyd*, iv. 472.

AGENT.

1. The principal is liable for the conduct of his agent while acting in his employment, although he act without or contrary to his order. *Hooe* v. *Mayor and Commonalty of Alexandria*, i. 98.
2. Selling liquors by the servant is selling by the master. *United States* v. *Voss*, i. 101.
3. The principal, who suffers his agent to keep a gaming-table contrary to law, is liable to the penalty of the statute. *United States* v. *Conner*, i. 102.
4. A public agent, contracting for public use, is not personally liable, although he contract under his sale. *Hodgson* v. *Dexter*, i. 109.
5. An agent of the plaintiff has a right to enter the house of the defendant with an officer to show him the goods to be taken on a *fi. fa.*, and the authority of the agent need not be in writing, but may be proved by the testimony of the agent himself. *United States* v. *Baker*, i. 268.
6. The authority of an agent to indorse a note need not be in writing. *Miller* v. *Moore*, i. 471.
7. Information, received by an agent of the insured, of the loss of the property before insurance effected, will not vacate the policy, unless that agent be the agent who obtained the insurance or gave the information to the person who obtains it. *Patton* v. *Janney*, ii. 71.
8. See ACTION UPON THE CASE, 10. *Pritchard* v. *Corporation of Georgetown*, ii. 191.

AGENT, (*continued.*)
9. A factor may retain for a general balance due by his principal. *McCobb* v. *Lindsay*, ii. 215.
10. If a factor sell in his own name, the vendee cannot set off a claim against the factor's principal not yet payable. *Ibid.*
11. If the defendant sell personal property as the agent and by authority of the plaintiff, and agree to pay the proceeds to him, he is liable to the plaintiff therefor, although other persons may have been jointly interested with the plaintiff in the property. *Gray* v. *Reardon*, ii. 219.
12. If the agency be special, the plaintiff must show the transaction to be within the scope of the agency. *Davis* v. *Robb*, ii. 458.
13. The declarations of the agent, in support of his authority, will not be received in evidence, unless contemporaneous with and constituting part of the *res gestæ*. *Ibid.*
14. A declaration upon a note payable to J. S., and averring that J. S., "acting by authority and as agent of the said defendant, indorsed the said note for and in behalf of the defendant by writing thereon the name of him the said J. S., as agent of the said defendant," should also aver that the note was made payable to the said J. S., as the agent and for and in behalf of the said defendant; otherwise the note will not appear to be indorsed by the said J. S., in the character in which it was made payable to him; and so no title in the plaintiff. *Wilson* v. *Porter*, ii. 458.
15. A notice given to the agent after the death of his principal will not bind the executors. *Bank of Washington* v. *Pierson*, ii. 685.
16. Notice to the agent is notice to the principal. *Kurtz* v. *Bogenriff*, ii. 701.
17. A Register of the Treasury of the United States is entitled to a reasonable compensation as agent for disbursing the money appropriated for the contingent expenses of the Treasury Department, library, &c., although at the same time he discharges the duties and receives the pay of Register of the Treasury; and such compensation is not barred by the statute of limitations. *United States* v. *Nourse*, iv. 151.
18. Money paid upon an erroneous judgment may be recovered back in an action for money had and received; and if the money shall have been paid to an agent of the original plaintiff, and remain in his hands at the time of reversal and demand, it may be recovered of the agent. If the amount of the judgment be paid to the plaintiff's agent, and he be notified at the same time, that a writ of error will be taken out to reverse the judgment, and that he will be expected to return it if the judgment should be reversed; if he then pay over the money to his principal without security for his indemnity, it is at his own peril. *Bank of Washington* v. *Bank of the United States*, iv. 86.
19. A promissory note signed by A. B. as agent of an incorporated company, does not, upon its face, import a personal obligation; and it is not incumbent upon the defendant to show his authority to make such a note; nor the extent of his powers; nor that the money was applied to the use of the company; nor that he declared it to be for their use. The burden of proof in such case is upon the plaintiff. *Bradley* v. *McKee*, v. 298.
20. If, at the date of the note, or at the time it became payable, the company had ceased to do business as a company, the corporation was not thereby dissolved, nor the defendant thereby rendered personally responsible upon the note; and if, after the making of such note, the corporate property was sold by the company, who ceased to do business as a corporation, and the stockholders made a distribution of the effects of the corporation, and apportioned the debts due by the company to be paid by such individual stockholders, the corporation did not thereby cease to exist, but was capable of being bound by such note. *Ibid.*
21. If a note be given by a person *bonâ fide* as agent of an incorporated manu-

AGENT, (*continued.*)
facturing company, for a loan of money to the company, and the same was known to the person who discounted it at the time of his discounting it, the agent is not personally liable upon the note. *Ibid.*
22. A sale made by an agent of a trustee, according to the terms and conditions, and at the time and place prescribed, is a sale by the trustee; there being no law requiring him to be personally present. *Connolly* v. *Belt*, v. 405.
23. If an agent, whose duty it is to keep the goods and effects of his employer separate, mix them with his own, it lies with him to distinguish them; and if he cannot, the whole is to be considered as belonging to the other; and every sort of profit derived by an agent, from dealing or speculating with the effects of his principal, is the property of the principal, and must be accounted for. *Yates* v. *Arden*, v. 526.
24. See AUTHORITY, 1. *Welch* v. *Hoover*, v. 444.

AGREEMENT.
1. Although there be an agreement that the value of extra work should be ascertained by persons mutually chosen, yet, if such valuation has not been actually made, the plaintiff, in an action upon a *quantum meruit*, may give other evidence of the value of the work. *Baker* v. *Herty*, i. 249.
2. The Court will not enforce the private agreements of counsel, but will not suffer parties to be entrapped by such agreements. *Moore* v. *Dulany*, i. 341.
3. The Court will not receive parol evidence of the agreement of counsel respecting the admission of papers in evidence. *Lambert* v. *Smith*, i. 361.
4. An agreement by the plaintiff to release the defendant, upon his executing a deed, is a good defence on *non assumpsit*, the deed having been executed. *Bartleman* v. *Douglass*, i. 450.
5. If there be a special agreement, not under seal, and the plaintiff has performed it on his part, exactly according to its terms, he may recover the contract price in an action of *indebitatus assumpsit* for work and labor done and materials furnished, without a special count upon the written agreement. *Brockett* v. *Hammond*, ii. 56.
6. A contract for the sale of notes of a private bank, if not in writing is within the statute of frauds. *Riggs* v. *Magruder*, ii. 143.
7. A verbal agreement, which is to be put into writing and signed the next day, is not complete, so as to bind either party, until reduced to writing and signed. *Ibid.*
8. In an action of debt against Daniel Carroll and William Brent, survivors of Charles Carroll and Elie Williams, upon articles of agreement, and averring the articles to be sealed with the seals of the said Williams and Carrolls and the said William Brent, if, on profert and oyer the articles appear to be signed and sealed thus: Williams & Carrolls, (seal); William Brent, (seal); Thomas Tingey, (seal); the variance is fatal on general demurrer. One joint contractor cannot bind the others by seal. There cannot be a joint seal for divers persons not incorporated. *Tingey* v. *Carroll*, iii. 639.

ALDERMAN.
An alderman of Washington City cannot sit in a case in which the corporation is a party. *Hall* v. *Corporation of Washington*, iv. 722.

ALEXANDRIA.
1. The by-laws of Alexandria of 1784, apply to the subsequent addition made to the town by the Act of 1797. *Commonwealth* v. *Smith*, i. 47.
2. A declaration against the Common Council of Alexandria, for work and labor done for "the mayor and commonalty," must show how the new

ALEXANDRIA, (*continued.*)
corporation is liable for the debts of the old. *Lyles* v. *Common Council of Alexandria*, i. 473.
3. The lots lying west of West Street in Alexandria are liable to be taxed, like other lots in the town. *Common Council of Alexandria* v. *Wise*, ii. 27.
4. The Common Council of Alexandria has no authority to make by-laws operating beyond the limits of the town as described in the Acts of Virginia of December 13, 1796, and January 8, 1798; and the jurisdiction of the mayor is confined to the same limits. *Ex parte Joseph Deane*, ii. 125.
5. The Corporation of Alexandria cannot enforce its by-laws by corporal punishments. *Ibid.*
6. A conviction of the offence of keeping a faro-bank contrary to a by-law of the Corporation of Alexandria, is no bar to an indictment at common law for keeping a disorderly house, supported by the same evidence. *United States* v. *Robin Hood*, ii. 133.
7. The by-law of Alexandria requiring the master to pay a poll-tax for his journeyman, is not repugnant to the general law of the land, and is authorized by the charter. *Morgan* v. *Rowan*, ii. 148.
8. The Common Council of Alexandria have power by their by-laws to prohibit the keeping of gaming-tables in the town, under a penalty to be recovered by warrant before the mayor, in the name of the Common Council, and to be levied upon the goods and chattels of the offender, although he may be also liable to prosecution under the laws of Virginia, adopted by the Act of Congress of the 27th February, 1801. *McLaughlin* v. *Stephens*. *Ibid.*
9. It is not necessary that an order of the Common Council for the pavement of any particular street, should be passed as a by-law, and submitted to the mayor for his approbation. *Common Council* v. *Mandeville*, ii. 224.
10. Upon a motion for judgment against a proprietor of lots liable for the expense of paving the street opposite the lots, the Court will not receive evidence that the pavement was badly done. *Ibid.*

ALIENAGE.
1. Alienage is not a good cause of challenge of a juror. *Mima Queen* v. *Hepburn*, ii. 3.
2. An alien enemy, residing here by license from the government of the United States, is competent to maintain a personal action; and, if residing here before the war as a mechanic, and continuing so to reside until the time of bringing suit, the jury may presume that he was remaining here under the permission and license of the government, although he had not reported himself according to the President's proclamation. *Otteridge* v. *Thompson*, ii. 108.
3. An alien is not liable to militia duty. *Slade* v. *Minor*, ii. 139.
4. Naturalization cannot be proved by parol. *Ibid.*
5. In the year 1796, A covenanted with B to pay rent to the "heirs and assigns" of C, a citizen of the United States, who had died in the year 1785, leaving as his nearest of kin and heir at law, a sister who was then an alien, and a British subject, who was born and always resided in Scotland. *Held*, that the executor of B might recover the rents against the executor of A, in an action of covenant for the use of the sister, notwithstanding her alienage. *Wise* v. *Resler*, ii. 182.
6. An alien could not become a citizen of the United States, or of either of the States, in the year 1793, by taking the oaths, and otherwise complying with the requisites of the naturalization laws of any one of the States. *Matthews* v. *Rae et al.*, iii. 699.
7. An alien, as such, has a right, under the Maryland Act of December 19,

ALIENAGE, (*continued.*)
1791, "concerning the Territory of Columbia," &c., to purchase and hold lands in the county of Washington, D. C., and transmit the same to his alien heirs. *Ibid.*

ALIENS.
1. If one of four parceners be an alien, the land descends to the other three. *Contee* v. *Godfrey*, i. 479.
2. A British subject could not, in 1793, inherit lands in the United States from a citizen of the United States. *Ibid.*
3. The statute of 7 Anne, c. 5, § 3, does not apply to children born under the same allegiance with that of their father. *Ibid.*
4. A decree of partition between heirs, some of whom are aliens, does not estop those who are not aliens from claiming the whole, in ejectment. *Ibid.*

ALIMONY.
A bill for alimony having been filed, the Court, upon the petition of the plaintiff for a temporary support *pendente lite*, ordered two dollars a week to be paid to her until the further order of the Court. *Auld* v. *Auld*, iv. 84.

ALLEYS.
The purchaser of lots in the city of Washington, by the square foot, is not bound to pay for a proportion of the alleys, if there be no special agreement to that effect. *Brent* v. *Smith*, v. 672.

AMENDMENT.
1. An information may be amended by stating that the penalty accrued to the town, instead of the Commonwealth. *Commonwealth* v. *Smith*, i. 22; *United States* v. *Evans*, *Id.* 55; *United States* v. *Shuck*, *Id.* 56.
2. In slander, the plaintiff may have leave to withdraw his general replication, and file a general demurrer, and the Court will permit the defendant to change his plea. *McGill* v. *Sheehee*, i. 49.
3. The defendant may have leave to amend, on payment of the costs of the term, or a continuance, at the plaintiff's option. *Milburne* v. *Kearnes*, i. 77.
4. Leave may be given to substitute a general demurrer for the general issue. *Krouse* v. *Sprogell*, i. 78.
5. The Court will not give leave to amend by changing the action from case to covenant. *Scholfield* v. *Fitzhugh*, i. 108.
6. The Court will give the defendant leave to withdraw the plea of "covenants performed," and to file a special plea, if it appear to be a plea to the merits, and not decidedly bad; leaving the plaintiff to his demurrer. *Gill* v. *Patten*, i. 114.
7. After a writ of error has been served and returned to the Supreme Court, the record is no longer before the Court below, and cannot be amended, although at an adjourned session of the same term it appear that the writ of error has been dismissed in the court above at the request of the party praying the amendment. *United States* v. *Hooe*, i. 116.
8. If the clerk neglect to strike out the judgment as ordered by the Court, it may be done by order of the Court at the next term, on affidavit of the facts. *Ex parte Smith*, i. 127.
9. A declaration may be amended, by leave of the Court, by inserting the names of the members of the firm. *Tibbs & Co.* v. *Parrott*, i. 177.
10. The Court will not give leave to amend a demurrer unless it goes to the merits. *Offutt* v. *Beatty*, i. 213.
11. A declaration in slander may be amended by adding a new charge. *Dougherty and Wife* v. *Bentley*, i. 219.
12. The writ and declaration may be amended by correcting the corporate name of the plaintiff. *Corporation of Georgetown* v. *Beatty*, i. 234.

AMENDMENT, (*continued.*)
13. The Court will not permit an amendment making new parties. *Morris* v. *Barney*, i. 245.
14. After plea of "property in the defendant," the Court will permit the defendant to plead "property in a stranger," on payment of all antecedent costs, and a continuance if requested. *Semmes* v. *Oneale*, i. 246.
15. If, by an amendment, the nature of the action be changed, it is to be considered as a new cause, and may be continued, although at the fifth term after its commencement. *Schnertzell* v. *Purcell*, i. 246.
16. Substantial amendments must be upon payment of full costs. *Ferris et al.* v. *Williams*, i. 281.
17. A writ of attachment and *capias* may be amended before condemnation, by leave of Court. *Birch* v. *Butler*, i. 319.
18. A material amendment of a bill in equity, after answer, must be upon payment of all costs, including a solicitor's fee. *Wallace* v. *Taylor*, i. 393.
19. When leave is given to amend on payment of costs, the payment is not a condition precedent, unless so specially expressed in the order. *Wigfield* v. *Dyer*, i. 403; *Butts* v. *Chapman*, *Id.* 570.
20. When the record is made up, and entered in the record-book, it cannot be altered unless by order of the Court under certain circumstances. *Barnes* v. *Lee*, i. 430.
21. The plea of *nul tiel record*, refers to the time of the plea pleaded; and a subsequent amendment of the record does not affect the issue. *Ibid.*
22. A clerical mistake in entering a judgment may be corrected at a subsequent term; and an execution issued thereon may be quashed. *Pierce Turner*, i. 433; *Barnes* v. *Lee*, *Id.* 471.
23. After plea of misnomer in abatement, the Court will not suffer the record to be amended but upon payment of costs, and a discharge of the bail. *Payen* v. *Hodgson*, i. 508.
24. While the cause is depending in the Supreme Court the Circuit Court will not suffer the declaration, which was substantially defective, to be amended. *Marsteller* v. *McClean*, ii. 8.
25. After a writ of error returned, the court below can only permit clerical errors in the process or proceedings to be amended. *Ibid.*
26. The Court will not grant leave to amend the writ by changing the name of one of the plaintiffs. *Comegyss* v. *Robb*, ii. 141.
27. A clerical error in a writ of *scire facias* may be amended. *Tayloe* v. *Wharfield*, ii. 248.
28. The mistake of the clerk in misnaming one of the parties, in a commission to take the deposition of a witness, may be amended by the order, in case of the death of the witness before the trial. *Boone* v. *Janney*, ii. 312.
29. After the jury is sworn to try the issue upon allegations filed against an insolvent debtor, the Court will not permit the allegations to be amended by inserting the name of another creditor. *Walter Newton's case*, ii, 467.
30. If the jury find the amount of rent arrear in damages, without stating it to be the amount of the rent, the Court will permit the verdict to be so amended by the clerk after the jury have rendered their verdict and retired from the bar, and even after another cause has been tried. *Arguelles* v. *Wood*, ii. 579.
31. When some of the defendants have been taken and others not arrested, the plaintiff may amend his declaration, at the trial term, in that respect, as a matter of right, and such amendment will not authorize the defendant to plead the statute of limitations. *Bell* v. *Davis*, iii. 4.
32. If the defendant reads the credit side of the account, filed by the plaintiff as part of his declaration, he thereby makes the whole account evidence for the plaintiff. *Ibid.*
33. Upon leave given to the defendant to amend his pleadings in an action for

AMENDMENT, (*continued.*)
a libel, the Court will not receive pleas in justification which do not contain a justification of what they profess to justify. *Kerr* v. *Force*, iii. 8.
34. If, by mistake of the clerk, the judgment be entered against the defendant by a wrong name, (William, instead of Samuel,) the Court will order the judgment to be rescinded, and the continuances to be entered up, and the proceedings corrected, under the Maryland law. *Bank of the United States* v. *McKenney*, iii. 173.
35. After the jury is sworn, the Court will not suffer the plaintiff to amend if the justice of the case is against him. *Clarke* v. *Mayfield*, iii. 353.
36. A *scire facias* to revive a judgment, on confession, for damages only in an action of debt, cannot be amended, if it be conformable to the judgment; nor can the judgment be amended upon *nul tiel record*, in *scire facias*. *Brown* v. *Gilles*, iii. 363.
37. If, upon leave to amend, the plaintiff add a count upon a cause of action which could not be given in evidence upon the original declaration as sent out with the writ, or which is not contained in the affidavit to hold to bail, the bail must be discharged. *Hyer* v. *Smith*, iii. 437.
38. A petition for freedom is an action *quasi in formâ pauperis*, and the Court ought to see that the petitioner is not entrapped in the subtilties of special pleading; and for that purpose will permit repeated amendments, especially after the other party has amended his pleadings. *Neg. Thomas Butler* v. *Duvall*, iii. 611.
39. The return of a *scire facias* against terre-tenants may be amended. *Mandeville* v. *McDonald*, iii. 631.
40. The Court will not, at the trial, permit the defendant to amend his pleadings unless they are satisfied of the justice of the defence intended to be made by the new pleas. *Allen* v. *Magruder*, iii. 6.
41. In ejectment, the fictitious lease may be amended after the jury is sworn, on payment of costs of the term. *McDaniel* v. *Wailes*, iv. 201.
42. Bail will not be discharged by leave to amend the declaration, unless the amendment charges a cause of action different from that upon which bail was given. *Carrington* v. *Ford*, iv. 231.
43. An amendment conforming the declaration to the cause of action upon which bail was given, will not authorize a discharge of the bail. *Ibid.*
44. An information, in the nature of a writ of *quo warranto*, may be amended. *Gunton et al.* v. *Ingle et al.*, iv. 438.
45. The Court will, at a subsequent term, correct a judgment entered, by mistake, for too large a sum. *United States* v. *Fearson*, v. 95.
46. If the defendant has pleaded and also demurred to the whole declaration, the Court will permit him to withdraw the demurrer. *Suckley* v. *Slade*, v. 123.
47. With the leave of the Court, the plaintiff in ejectment may amend his declaration by a count upon a new demise; which count will be considered as the commencement of the suit as to the title claimed under that demise. *Wilkes* v. *Elliot*, v. 611.
48. The marshal may amend his return of a *fi. fa.* according to the truth of the case; stating the sale, &c., from his sales book. *Linthecum* v. *Remmington*, v. 546.

AMERCEMENT.
1. If the defendant has been discharged under the insolvent law of the District of Columbia upon a *capias ad respondendum*, the marshal will be discharged from his amerecement for not bringing him in at the return of the writ, upon the defendant's entering his appearance in proper person. *Trundle* v. *Heise*, ii. 44.
2. If the defendant, arrested upon a *capias ad respondendum*, be discharged under the insolvent act before the return of the writ, and fail to appear,

AMERCEMENT, (*continued.*)
the marshal cannot be amerced for not bringing him in. *Williams* v. *Craven*, ii. 60.

3. If the marshal fail to bring in the body of the defendant upon the return of the writ, he will be amerced to the full amount of debt or damages and costs; and judgment will be entered therefor *nisi* the second day of the next term. *Winter* v. *Simonton*, ii. 585.

ANSWER.

1. An answer in chancery is not sufficiently authenticated, unless the authority of the justice of the peace before whom it was sworn be sufficiently shown. *Addison* v. *Duckett and Wife*, i. 349.
2. The answer to a bill in equity, so far as it is responsive to the allegations of the bill, is conclusive evidence, unless contradicted by two witnesses. *Harper* v. *Dougherty*, ii. 284.
3. Upon a motion to dissolve an injunction, an averment in the answer, not responsive to any allegation in the bill, is not *per se* evidence against the complainant. *Robinson* v. *Cathcart*, ii. 590.
4. An answer of the defendant, in order to be evidence in his favor, must be an answer to a fact averred in the bill, and not an answer to a mere inference of law. *Ibid.*
5. The answer of one defendant is not evidence for another. *Ibid.*
6. If there be several defendants the Court will not, in general, dissolve the injunction till all have answered. *Ibid.*
7. The answer of a defendant in chancery who has no personal knowledge of the facts he states, and whose conscience cannot be affected thereby, is not evidence, although responsive to the allegations of the bill. The only effect of such an answer is to present an issue, and put the plaintiff to the proof of his allegations. *Dutilh* v. *Coursault*, v. 349.

APPEAL.

1. Costs, on appeal from a justice of the peace, are within the discretion of the Court, if the judgment be affirmed in part. *Mead* v. *Scott*, i. 401.
2. Upon appeal from the judgment of a justice of the peace, the cause is to be tried *de novo*. *Minifee* v. *Duckworth*, ii. 39.
3. New evidence cannot be heard upon an appeal from the Orphans' Court. *Gittings* v. *Burch*, ii. 97.
4. An executrix has a right to appeal from a sentence of the Orphans' Court, to this Court, without giving security to prosecute the appeal with effect. *Deneale* v. *Young*, ii. 200.
5. No appeal lies from the judgment of a justice of the peace imposing a fine for profane swearing in his presence. *Howard* v. *United States*, ii. 259.
6. No appeal lies to this Court, from the judgment of a justice of the peace for a penalty for violating a by-law of Georgetown. *Boothe* v. *Corporation of Georgetown*, ii. 356.
7. *Quære*, whether this Court has jurisdiction of an appeal from the judgment of a justice of the peace upon the verdict of a jury? *Sherburne* v. *Semmes*, ii. 446.
8. An appeal does not lie to this Court from the judgment of a justice of the peace in a cause which has been tried by a jury before the justice. *Davidson* v. *Burr*, ii. 515; *Maddox* v. *Stewart*, ii. 523.
9. In Maryland, in the year 1819, the appellant was not bound to prosecute his appeal and transmit the record until the term next after the approval of the appeal-bond. *Scott* v. *Law*, ii. 530.
10. See ACCOUNT. *Nicholls* v. *Hodge*, ii. 582.
11. There cannot be an appeal from the original judgment of the justice after a *supersedeas*. *Coumbe* v. *Nairn*, ii. 676.
12. If the justice of the peace had not jurisdiction of the cause, his judgment

APPEAL, (*continued.*)
may be reversed upon appeal although the cause was tried before him by a jury. *Cross* v. *Blanford*, ii. 677.

13. No appeal lies from the judgment of a justice of the peace unless the "debt or demand" exceed the sum of five dollars. *Thornton* v. *Corporation of Washington*, iii. 212.

14. In a jury trial before a justice of the peace there is no mode in which the law of the case can be brought before the Circuit Court, separated from the question of fact. *Denny* v. *Queen*, iii. 217.

15. Upon a jury trial before a justice of the peace under the Act of Congress of March 1st, 1823, the justice is not bound to sign a bill of exceptions, as no writ of error or appeal will lie in such a case. *Smith* v. *Chase*, iii. 348.

16. In an action upon an appeal-bond given upon a writ of error to the Supreme Court of the United States, the breach to be assigned must be a single breach denying each alternative; that is, it must aver that the plaintiff in error did not prosecute his writ to effect; nor make his plea good; nor answer the damages and costs; which damages and costs the plaintiff must specially set forth.

The plaintiff in error is not bound at all events to answer the damages adjudged to the defendant in error in the Supreme Court; he is only to indemnify the defendant in error for whatever losses he may have sustained by the judgment's not being satisfied and paid after affirmance. The damages and costs must be made to appear, at least in the allegation of the breach. They are not such as the law implies, but are special damages which must exist before a cause of action upon the bond can accrue to the plaintiff. *Tucker* v. *Lee*, iii. 684.

17. To an action on an appeal-bond setting forth a special breach, it is not a good plea, to say that the plaintiff is not damnified by any thing in the condition mentioned. The only design of a general plea of *non damnificatus* is to force the plaintiff to assign a breach of the condition; but when the breach is already specially assigned, the plea must answer the specific assignment. *Ibid.*

18. In action upon an appeal-bond the damages may not be limited to the amount of damages accruing upon affirmance of the judgment and adjudged by the Supreme Court to the plaintiff for his delay and his costs.

The Court refused to instruct the jury, that the plaintiff was entitled to recover damages for the amount of the original judgment in a suit upon the bond. *Ibid.*

19. An appeal from the Orphans' Court in Washington county, D. C., will be dismissed if the transcript of the record be not transmitted to this Court within thirty days after the order appealed from. *Mauro et al.* v. *Ritchie*, iii. 147.

20. The Orphans' Court has a right to review its sentence, although thirty days shall have elapsed and the party shall have lost his right of appeal from the original sentence; and from the judgment of the Orphans' Court upon that review an appeal lies to this Court. *Ibid.*

21. The difference between a rehearing and a review is, that a rehearing may be had before enrolment of the decree; but after enrolment the party is put to his bill of review. A petition for a review, in the Orphans' Court, is analogous to a bill of review in chancery.

A judgment of the Orphans' Court against the petitioner upon demurrer to the petition for review is, in effect a judgment that the errors suggested in the petition for review, as apparent on the record, were not such as ought to have induced the Orphans' Court to reverse its decree; and from this judgment of the Orphans' Court the party may appeal to this Court. *Ibid.*

APPEAL, (*continued.*)

22. The condition of an appeal-bond is broken unless the judgment be reversed *in toto*. *Butt* v. *Stinger*, iv. 252.
23. Appeals from the Orphans' Court for the county of Alexandria, D. C., are governed by the same rules as in the county of Washington, and must be taken within the time limited by the Maryland testamentary system, c. 15, § 18. *Tracy* v. *Scott*, iv. 250.
24. Upon an appeal, it is in the discretion of this Court to allow or refuse costs upon the reversal of the judgment of a justice of the peace. *Ward* v. *Corporation of Washington*, iv. 232.
25. In an action upon an appeal-bond to the Supreme Court of the United States, in setting forth the breach of the condition, it must be averred that the plaintiff has sustained damages to a certain amount by the defendant's not making his plea good. The defendant is not, by the condition of the bond, bound absolutely to pay the amount of the original judgment, nor even the damages and costs that may be awarded by the appellate court, for the delay; but only to answer such damages and costs as the appellee shall sustain by the appellant's failure to make the plea good. *Bank of the Metropolis* v. *Swann*, iii. 139.
26. Although an appeal will not lie to the judgment of a justice of the peace upon a verdict of a jury, yet if the defendant does, in fact, appeal and give an appeal-bond, the plaintiff may maintain an action upon that bond. *Chase* v. *Smith*, iv. 90.
27. An appeal lies from the judgment of a justice in the county of Washington, D. C., for the penalty of a by-law of the Corporation of Washington. *Corporation of Washington*, v. *Eaton*, iv. 352.
28. A justice of the peace in the county of Washington, D. C., has jurisdiction of offences against the by-laws of the Corporation of Washington. *Ibid.*
29. An appeal does not lie from the judgment of a justice of the peace for five dollars only. *Owner* v. *Corporation of Washington*, v. 381.
30. Upon an appeal from the sentence of the Orphans' Court sustaining a will, this Court has no jurisdiction to inquire into the validity of any particular legacy bequeathed by the will. *Newton* v. *Carbery*, v. 626.
31. If the party appealing from the judgment of a justice of the peace die pending the appeal, and no further proceedings are had in the cause for two terms thereafter, the sureties in the appeal-bond are not liable for the appellant's not having prosecuted his appeal with effect. *Jeffers* v. *Forrest*, v. 674.

APPRENTICE.

1. *Assumpsit* lies by the apprentice against his master for not teaching him his trade, although no indentures were executed, the master having taken him under an order of the Court. *Adams* v. *Miller*, i. 5.
2. The father of an apprentice who binds himself, is liable upon the indentures by reason of his signature and seal, although there are no express words of covenant binding him. *Woodrow* v. *Coleman*, i. 171.
3. A master cannot bring his apprentice from Maryland to Alexandria, and hold him there. *United States* v. *Scholfield*, i. 255.
4. The master of an apprentice is concluded by the recital in the indentures as to the age of the boy. *McCutchen* v. *Jamieson*, i. 348.
5. The Circuit Court in Alexandria has jurisdiction to discharge an apprentice for cruelty of the master; and to bind him to a new master. *Cannon* v. *Davis*, i. 457.
6. The order of the Orphans' Court to bind out an apprentice does not constitute the relation of master and apprentice. *Stewart* v. *Duffey*, i. 551.
7. An infant cannot bind himself as an apprentice, nor can the master assign the indentures. *Handy* v. *Brown*, i. 600.

APPRENTICE, (*continued.*)

8. A note given for the assignment of the time of an apprentice, being for an illegal consideration, is void. *Walker* v. *Johnson*, ii. 203.
9. An apprentice bound in Maryland and brought into this district, may be discharged by this Court, who will order him to be bound again by two justices of the peace, to a new master. *Negro Gusty* v. *Edward Diggs*, ii. 210.
10. Under the Maryland Act of 1793, c. 45, § 6, a mechanic may take as an apprentice any male child until he arrives at the age of twenty-one years; and an indenture made by one justice of the peace only, for five years' service of the boy, was, under the seventh section, enforced by the Court after the boy had been some time with the master, (who was a tailor,) and was able to earn eight or nine dollars a week by working at the trade, although one justice of the peace had no authority so to bind him, and although the age of the boy was not specified in the indenture, and although the indenture was not seen by the Orphans' Court, nor recorded; nor signed by the boy or his mother, who was his only living parent; nor her approbation thereof notified by an indorsement on the same. *Charles* v. *Matlock*, iii. 230.
11. Two justices of the peace cannot bind out an apprentice, in Washington county, while the Orphans' Court is in session. *May* v. *Bayne*, iii. 335; *Lynch* v. *Ashton*, iii. 367.
12. It is only where there is a contract in part executed, that the Court can compel the parties to execute it in an equitable manner under the seventh section of the Maryland Act of 1793, c. 45. *Lynch* v. *Ashton*, iii. 367.
13. The father, with the consent of his son, fifteen years old, bound him to Glenn as an apprentice; the son signed and sealed the indentures, but was not named as a party therein, nor was there any covenant on his part. The Court refused to discharge him. *Studer* v. *Glenn*, iii. 650.
14. The Orphans' Court of Alexandria county has authority to bind out orphan children without indenture. *Bell* v. *English*, iv. 332.
15. An entry on the minutes of the Orphans' Court, that Peyton Hines be bound apprentice to Peter Hewitt, does not constitute a lawful binding. *Hines* v. *Hewitt*, iv. 471.
16. The binding out of an apprentice by two justices of the peace in Washington county, D. C., is of no effect unless the parent or parents, if living, approve and indorse the indentures within two months. *Barrett* v. *McPherson*, iv. 475.
17. Justices of the peace in Washington county, D. C., have no power to bind out an orphan child while the Orphans' Court is in session. *Gody* v. *Plant*, iv. 670.
18. Justices of the peace in Washington county, have no power to bind out an orphan not brought before them.

    If the Court discharge an apprentice, they will order him to be bound out by the Orphans' Court to a person named in the order. *Smith* v. *Elwood*, iv. 670.
19. A stranger to the indentures of apprenticeship cannot take advantage of the omission to insert the age of the apprentice. *Heinecke* v. *Rawlings*, iv. 699.
20. In the indentures of an apprentice bound out by the Orphans' Court, it is not necessary to state that the apprentice was present in court; it will be presumed, unless the contrary appears. *Smith* v. *Elliot*, iv. 710.
21. Minors may be enlisted in the marine corps as musicians, with the consent of their fathers, and may be bound apprentices to the drum-major in behalf of the United States. *Ex parte William Brown*, v. 554.
22. If a minor, aged nineteen years, enlist for the term of four years, *quære* whether he is not entitled to his discharge at the age of twenty-one? *Ibid.*

ARBITRATION.

1. An award is void, which is final and conclusive, and does not embrace all the matter submitted, and settle the dispute. *Talbot* v. *Hartley*, i. 31.
2. When the terms of submission to arbitration are uncertain, parol evidence may be given of the controversies submitted. *Davy* v. *Faw*, i. 89.
3. An award may be good in part and void in part. *Wise* v. *Geiger*, i. 92.
4. Although there be an agreement that the value of extra work should be ascertained by persons mutually chosen, yet, if such valuation has not been actually made, the plaintiff, in an action upon a *quantum meruit*, may give other evidence of the value of the work. *Baker* v. *Herty*, i. 249.
5. Parol evidence may be given to explain the terms of submission. *Faw* v. *Davy*, i. 440.
6. An award, made upon part only, of the subjects submitted, will be set aside. *Ibid.*
7. When the condition of an arbitration-bond is to abide by the award of J. S. and S. B., and a third person to be chosen by them in case they should not agree upon an award, the award need not state why it is signed by three arbitrators, nor that the third person was appointed in writing; nor that the two named had disagreed before they appointed the third. *Frye* v. *Scott*, iii. 294.
8. An umpire is not to be called in until the original arbitrators have differed, and then only to decide the points on which they differ. *Traverse* v. *Beall*, ii. 113.
9. An umpire must give notice to the parties and to the arbitrators, of the time and place of his proceeding to act upon the subject submitted. *Thornton* v. *Chapman*, ii. 244.
10. An award signed by J. M. and J. P. J. as an award made in pursuance of a reference to them, will not support an averment of an award, or umpirage, made by the said J. P. J., as umpire upon the failure of the two original arbitrators, J. M. and C. L. N., to deliver their award within the time limited by the bond. *Goldsborough* v. *McWilliams*, ii. 401.
11. An award not delivered within the time prescribed by the arbitration-bond, is not valid. *Ibid.*
12. When the time for delivering the award is limited by the bond, parol evidence cannot be received to show an extension of the time. *Ibid.*
13. Upon the submission of a cause to arbitration by consent of parties and rule of Court, the arbitrators are not bound to give notice to the parties of the time and place of making their award. *Masterson* v. *Kidwell*, ii. 669.
14. After submitting a cause to arbitration by rule of Court, neither party can revoke his submission without consent of the other. *Ibid.*
15. Notice of the filing of the award may be given to the attorney at law of the opposite party. *Ibid.*
16. Want of notice is no ground of exception; but of a motion to set aside the award. *Ibid.*
17. *Quære*, whether a motion, to set aside an award, must not be made within four days after notice of filing the award? *Ibid.*

ARREST.

1. A discharge of the appearance bail arrested upon a joint *ca. sa.* against him and his principal, does not release the principal. *Watson* v. *Summers*, i. 200.
2. When a person is arrested upon a bench-warrant for treason, the Court will commit him without stating when or where he is to answer for the offence. *United States* v. *Bollman and Swartwout*, i. 373.
3. Upon an attachment for contempt the marshal cannot detain the party after the return day of the attachment, unless by an order of commitment by the Court. *Ex parte Burford*, i. 456.

ARREST, (*continued.*)

4. A constable having a warrant to arrest a man for assault and battery has a right to break open the door of the offender's dwelling-house to arrest him. *United States* v. *Faw*, ii. 487.
5. An officer having a warrant against a person already in his custody, may hold him under it without informing him that he is arrested upon it. *United States* v. *Omeara*, i. 165.
6. A debtor discharged under the insolvent law, cannot be arrested for a debt contracted before his discharge, although not payable till after his discharge. *James Anderson's case*, ii. 243.
7. A justice of the peace in Alexandria county has no power to issue a *capias ad respondendum*, or warrant of arrest, for a small debt. *Ex parte T. J. Minor*, ii. 404.
8. An insolvent debtor, arrested for debt due before his discharge, can only be relieved by the court, or a judge of the court before whom the process is returnable. *Frere* v. *Mudd*, ii. 407.
9. If a warrant contain, on its face, a cause of arrest within the jurisdiction of the magistrate, and purport to have been issued within the local jurisdiction of the magistrate, and be, in other respects, formal, the officer is bound to execute it, and resistance is unlawful, although, in fact, the offence was not committed within the local jurisdiction of the magistrate. *United States* v. *Thompson*, ii. 409.
10. A woman, against whom a justice of the peace has issued a warrant for a small debt, and who is notified by the officer to appear before the justice at a certain time and place named in the warrant, is bound to appear and answer, and if she does not, the justice may proceed *ex parte*, and render judgment against her by default. *O'Neal* v. *Hogan*, ii. 524.
11. A recommitment of a debtor upon a *ca. sa.* after he has been out more than a year, on a prison-bounds bond, is not a breach of his privilege as a witness and party bound to attend court. *Ex parte A. T. F. Bill*, iii. 117.
12. It is a long-established principle of the common law, that a man shall not be twice taken in execution for the same cause. This principle is as applicable to the United States as to other creditors; and, under the Maryland law, is as applicable to a *ca. sa.* for a fine, as to a *ca. sa.* for any other debt. *United States* v. *Watkins*, iv. 271.
13. A constable is not in the discharge of his official duty when searching for a man (who is represented to him as, and whom he believes to be, a loose and disorderly person, without visible means of livelihood, a nightwalker, and frequenter of bawdy-houses, and a keeper of false keys,) with intent to arrest him without a warrant, and carry him before a justice of the peace, to be dealt with according to law; and it is not an indictable offence to threaten to kill the constable if he should attempt to arrest him. *United States* v. *Goure*, iv. 488.
14. *Quære*, whether a new *capias ad respondendum* for a misdemeanor can be lawfully issued while the party is in custody of his bail upon a former *capias* for the same offence, he having failed to appear according to the tenor of the recognizance of bail. *United States* v. *Milburn*, iv. 552.
15. An action for false imprisonment will not lie for an arrest upon an execution which is only voidable, and not void. *Devlin* v. *Gibbs*, iv. 626.
16. An execution against two only upon a judgment against three, is erroneous, not irregular; voidable, not void. *Ibid.*
17. To support an action for a malicious arrest, it is necessary for the plaintiff to show, not only that it was made maliciously, but without probable cause. *Breckenridge* v. *Auld*, iv. 731.
18. A *ca. sa.* upon a judgment is good cause of arrest, and a declaration for a malicious arrest, showing such cause is bad on demurrer. *Ibid.*

ARREST, (*continued.*)

19. In an action for a malicious arrest it is no defence that the defendant's oath did not, in law, authorize the magistrate to grant the warrant, if the defendant availed himself of it, and delivered it to the constable, to be executed; unless the oath and arrest were made ignorantly and without malice. *Johnson* v. *Daws*, v. 283.

ARSON.

Arson is not a capital offence in the District of Columbia; therefore the defendant is not entitled to a peremptory challenge in the county of Washington. *United States* v. *Henry* [*White*, v. 73.

ASSAULT.

Cocking and raising a gun and threatening to shoot a person, is an assault in law, although there should be no attempt to shoot or injure the person. *United States* v. *Kierman*, iii. 435.

ASSAULT AND BATTERY.

1. In a joint assault and battery, a recovery in an action against one, is a bar to an action against the other. *Swope* v. *Courtney*, i. 33.
2. A man cannot lawfully push another off from his land without first requesting him to go off. *Thompson* v. *Berry*, i. 45.
3. Assault and battery by a seaman upon the master of a vessel does not amount to a confinement of the master, nor to an attempt to excite a revolt, within the Act of Congress. *United States* v. *Lawrence*, i. 94.
4. In assault and battery, upon the plea of "not guilty," the plaintiff is not bound to prove that the defendant struck or assaulted him first; but upon the plea of *son assault demesne*, the defendant must prove that the plaintiff assaulted him first. *Stevens* v. *Lloyd*, i. 124.
5. If a man is present and encouraging an assault and battery, he is a principal. *United States* v. *Ricketts*, i. 164.
6. Mechanics who are building a house, have right to remove gently, all persons coming into the building without authority. *United States* v. *Bartle*, i. 236.
7. In assault and battery for beating the plaintiff's servant, *per quod*, &c., the plaintiff cannot recover without evidence of loss of service. *Voss* v. *Howard*, i. 251.
8. It is an assault to double the fist and run it at another, saying, "If you say so again I will knock you down." *United States* v. *Myers*, i. 310.
9. In assault and battery, the affidavit to hold to bail must state some specific injury to the person of the plaintiff, and must be positive as to some amount of damages. *Mecklin* v. *Caldwell*, i. 400.
10. A constable having a warrant to arrest a man for assault and battery, has a right to break open the door of the offender's dwelling-house, to arrest him. *United States* v. *Faw*, i. 487.
11. If a mortal stroke be given in Alexandria, and the death happen in Maryland, this Court has not jurisdiction of the offence as a homicide, but has jurisdiction of the assault and battery. *United States* v. *Bladen*, i. 548.
12. If several damages be assessed upon a writ of inquiry on a judgment by default in an action of assault and battery against two, the plaintiff may enter a *nolle prosequi* as to one, and take final judgment against the other. *Conner* v. *Cockerill et al.* iv. 3.
13. A conviction and sentence of an individual, not a member of Congress, by the House of Representatives of the United States, for a breach of privilege by assault and battery upon a member of the House, for words by him spoken in the House of Representatives in debate, are not a bar to a criminal prosecution by indictment for the same assault and battery. *United States* v. *Samuel Houston*, iv. 261.
14. An indictment will not lie, under the Penitentiary Act, for an assault with

ASSAULT AND BATTERY, (*continued.*)
intent to kill; there must be a battery also. *United States* v. *Turley*, iv. 334.

15. A simple assault and battery upon a slave, is not an indictable offence. A simple assault upon a slave, even with intent to murder him, is not an offence at common law. There must be a battery as well as an assault with intent to kill, to bring the case within the Penitentiary Act; but the Court refused to quash the indictment, without prejudice to a motion in arrest of judgment. *United States* v. *H. Lloyd*, iv. 468.
16. Upon indictment for assault and battery on M. H., with intent to kill him, a verdict, "guilty of an assault by shooting M. H., with intent to kill," is substantially a general verdict of guilty. *United States* v. *Richard B. Lloyd*, iv. 472.
17. An indictment under the Penitentiary Act, for assault and battery with intent to kill, need not aver it to be done with malice aforethought, nor with other evil intent than the intent to kill. *Ibid.*
18. Upon an indictment at common law for an assault with intent to kill and murder, the defendant may be found guilty of the simple assault only. *United States* v. *Cropley*, iv. 517.
19. A person convicted of an assault and battery committed in a riot, may still be tried and convicted of the riot. *United States* v. *Peaco et al.* iv. 661.
20. Upon an indictment against the husband for assault and battery upon his wife, she may be examined as a witness against him. *United States* v. *Fitton*, iv. 658.
21. An indictment at common law in the county of Alexandria, will lie against a free negro or mulatto for assault and battery upon a white man, notwithstanding the Virginia statute of 17th December, 1792, § 17. *United States* v. *Carter*, iv. 732.
22. An indictment for assault and battery at common law, and an indictment under the statute, for the same assault and battery with intent to kill, may be pending and tried at the same time; and if the defendant be found guilty upon both, the Attorney of the United States may enter a *nolle prosequi* as to either, and pray judgment on the other; but there cannot be judgment upon both. The pendency of another indictment against the defendant for the same offence, is no ground for arresting the judgment. *United States* v. *Negro James Herbert*, v. 87.
23. In an indictment under the statute for assault and battery with intent to kill, it is not necessary to state the manner and extent of the assault and battery, nor the particular weapon used. It is only necessary to describe the assault and battery as at common law, with the addition of the words charging the intent to kill, in the terms required by the statute. It is not necessary to charge the assault to be felonious, nor malicious, nor to be with malice prepense; nor to state any other circumstance to show that if death had ensued, it would have been murder. *Ibid.*
24. A former conviction cannot be pleaded in bar, unless it has been followed by judgment. *Ibid.*
25. If a man raise a club over the head of a woman within striking distance, and threaten to strike her if she open her mouth, this is an assault in law; he has no right to impose such a condition. *United States* v. *Richardson*, v. 348.
26. Upon an indictment for assault and battery with intent to kill, it is not necessary to show that the crime would have been murder if death had ensued. *United States* v. *Tharp*, v. 390.

ASSETS.

1. The proceeds of sales of lands, sold under a will to pay debts, are equitable assets. *Dixon* v. *Ramsay*, i. 496.

ASSETS, (*continued.*)

2. If a deed of trust for the benefit of children be set aside by a decree in equity, as being fraudulent as to creditors, and the trustee, who is also executor of the grantor, be decreed to sell and pay the creditors out of the proceeds of the trust-property, those proceeds are assets, as to the creditors, and the money paid to them is money paid by the executor, and may be recovered by him as executor from the person for whose use he paid it. *Lynn* v. *Yeaton*, iii. 182.
3. The proceeds of sale of an equitable title to land, are equitable, not legal assets. *Law* v. *Law*, iii. 324.

ASSIGNEE.

1. If the assignee of the lessee bind himself to the lessee to pay the rent to the lessor, the lessor may maintain an action of debt against the assignee for the rent, although the assignment be not acknowledged or proved and recorded agreeably to the Virginia Act of 13 December, 1792, "for regulating conveyances." *Cooke* v. *Myers*, i. 6.
2. An action brought by a bankrupt is not abated by substituting the name of the assignee as plaintiff. *Wise* v. *Decker*, i. 191.

ASSIGNMENT.

1. A release by an assignee of a chose in action is a bar to an action by the assignor for the same cause of action. *Dade* v. *Herbert*, i. 85.
2. The plaintiff, suing as assignee of a bankrupt, must produce the commission and proceedings and deed of assignment. *McIver* v. *Moore*, i. 90.
3. A draft drawn by a bankrupt, not payable out of any particular fund, is not such an assignment of the money in the hands of the drawee as will give the holder a right to the money before the acceptance of the draft. *Dickey* v. *Harmon*, i, 201.
4. The assignees of a British bankrupt cannot maintain a suit in their own names, in Maryland, against a debtor of the bankrupt; and it seems that a promise to pay the money to them would be void for want of consideration. *Perry et al.* v. *Barry*, i. 204.
5. A legal plaintiff has a right to dismiss a suit brought in his name by order of a person who claims to be his assignee; and the Court will not interfere to protect the assignee, unless the evidence of the assignment be clear. *Welch* v. *Mandeville*, i. 489.
6. The declarations of the assignor, made after the assignment of a chose in action, will not be received to defeat the action brought in his name. *Palmer* v. *Cassin*, ii. 66.
7. The mere possibility of a legacy cannot be assigned. *Cook* v. *Conway's Executors*, ii. 99.
8. The person who knowingly takes a dishonored check payable to bearer, takes it subject to the drawer's equity against the person from whom he received it. *Rounsavel* v. *Scholfield*, ii. 139.
9. After a note is taken up by the indorser its negotiability ceases, and he cannot, by transferring the note assign his right of action at law, so as to enable the assignee to sue in his own name. *Swann* v. *Scholfield*, ii. 140.
10. After the assignment of a claim upon an open account the debtor cannot, in an action brought for the use of the assignee, set off a claim against the assignor arising after notice of the assignment. *Weightman* v. *Queen*, ii. 172.
11. Payments made to the original creditor after notice of the assignment of the debt, cannot be given in evidence in a suit brought by the assignee in the name of the original creditor. *Gardner* v. *Tennison*, ii. 338.
12. In order to amerce the marshal in debt and costs for not bringing in the body of the defendant, the assignment of the cause of action to the mar-

ASSIGNMENT, (*continued.*)

shal may he made by the attorney and agent of the plaintiff. *Heyer* v. *Wilson*, ii. 369.

13. If the payee of a promissory note, after it has been dishonored, assign it to a debtor of the maker, and then give the maker a release upon his surrendering all his effects to a trustee for the benefit of his creditors, the assignee cannot recover upon the note in an action against the maker, who had no notice of the assignment until after the deed of trust and release had been executed. *Gelston* v. *Adams*, ii. 440.
14. Where there are contending assignees of a cause of action pending in court, the Court will not, on motion, decide the merits of their respective claims by ordering the action to be entered upon the docket as for the use of either of them. *Thomas* v. *Elliot*, ii. 432.
15. The assignment and delivery of the bill of lading and invoice of goods, *in transitu*, for a valuable consideration, conveys the legal title, and the goods cannot be attached as the property of the assignor. *Balderston* v. *Manro*, ii. 623.
16. In an action of covenant by the assignee of the lessor against the assignee of the lessee, the plaintiff may give parol evidence of an assignment by the lessee to the defendant.

An assignee of the lessee is not liable to the lessor upon the covenants in the lease, unless he is assignee of the whole estate of the original lessee. *May* v. *Sheehy*, iv. 135.

17. Drafts drawn by the defendant upon his debtor before attachment, are entitled to priority of payment out of the fund in the hands of the garnishee; although the garnishee has no notice of such drafts until after the attachment served. *King* v. *Gorsline*, iv. 150.
18. A draft by the defendant upon the garnishee in favor of a third person, before the attachment, is an assignment to the payee, of the amount stated in the draft, and will be preferred to an attachment. *Miller* v. *Frink*, iv. 451.
19. If the guarantor pay the debt he cannot maintain an action against the debtor in the name of the creditor, although he take an assignment of the debt from the creditor, unless at the time of the payment it was not intended to extinguish the debt, but to assign it to the guarantor. *Brown* v. *Decatur*, iv. 477.

ASSIZE OF BREAD.

If the price of superfine flour be not ascertained and published by the mayor or register in the last week of the preceding month, the penalty for selling loaves of insufficient weight cannot be recovered. *Friend* v. *Corporation of Washington*, ii. 19.

ASSUMPSIT.

1. *Indebitatus assumpsit* lies upon a judgment of a justice of the peace. *Green* v. *Fry*, i. 137.
2. The plaintiff cannot recover upon a general *indebitatus assumpsit* if a special agreement be proved. *Krouse* v. *Deblois*, i. 138.
3. A promise in writing made under a supposed legal liability which did not exist, is void for want of consideration. *Offutt* v. *Parrott*, i. 154.
4. *Assumpsit* will not lie at common law on a parol demise. The statute of 11 Geo. 2, c. 19, is not in force in Virginia. *Wise* v. *Decker*, i. 171.
5. An implied *assumpsit* is only coextensive with the consideration. An implied *assumpsit*, in consideration of assets alone, is a promise as administrator. *Courtney* v. *Hunter's Administrator*, i. 265.
6. *Indebitatus assumpsit* will lie for money due upon a special contract executed on the part of the plaintiff. *Hyde* v. *Liverse*, i. 408.
7. An acknowledgment or promise made by the defendant under ignorance

ASSUMPSIT, (*continued.*)
of the fact, or of the law, by which he was discharged, is not binding. *Thornton* v. *Stoddert*, i. 534.
8. The promise of a *feme covert* is void, and her subsequent promise when *sole*, without a new consideration, is also void. *Watson* v. *Dunlop*, ii. 14.
9. A promise in writing, without consideration, is void; but the burden of proof of want of consideration, is on the defendant. *Ibid.*
10. The plaintiff cannot give evidence of a consideration different from that alleged in the declaration. *Ibid.*
11. When a contract has been executed, *indebitatus assumpsit* will lie for the amount due upon it. *Maupin* v. *Pic*, ii. 38; *Brockett* v. *Hammond*, ii. 56.
12. If the plaintiff does certain work for the defendant's intestate under a special contract to be paid for it by the conveyance of a lot of ground, it is not competent for him, in an action of general *indebitatus assumpsit* against the defendant for work and labor done in the lifetime of her intestate, to recover the value thereof, without showing fraud in the defendant's intestate in making the contract. *Powling* v. *Varnum's Administratrix*, ii. 423.
13. *Assumpsit* will lie for the marshal's poundage fees upon a commitment on a *ca. sa.* *Ringgold* v. *Glover*, ii. 427.
14. Money paid upon an uncertain contingency, which both the payer and payee expected would happen, but which did not happen, may be recovered in an action for money had and received. *Riggs* v. *Taylor*, ii. 687.

ATTACHMENT.
1. A clerk of this Court is not entitled to sue by attachment of privilege. *Forrest* v. *Hanson*, i. 12.
2. Goods in the hands of an officer under a distress for rent may be attached by the same landlord for rent not yet due, and may be condemned, although replevied by the tenant after distress levied. *Herbert* v. *Ward*, i. 30.
3. This Court has not jurisdiction by attachment, in Alexandria, for a sum less than $20. *Rutter* v. *Merchant*, i. 36.
4. An attachment issued upon a return of *non est* before the return-day, will be quashed. *Cammilloz* v. *Johns*, i. 38.
5. A *fieri facias*, received by the marshal before an attachment for rent not due, is entitled to priority and must be first satisfied. *Stieber* v. *Hoye*, i. 40.
6. An attachment lies in Alexandria against an absconding debtor under the Virginia law of 26th December, 1792. *Allen* v. *Greenwood*, i. 60.
7. Attachment for non-payment of the costs of a continuance will not be granted against a defendant, against whom final judgment in the cause has been rendered. *McGill* v. *Sheehee*, i. 62.
8. No subpœna for attachment in chancery shall issue before bill filed. *General Rule*, i. 89.
9. Under the statute of Virginia, goods not upon the premises, may be attached to secure rent not yet due. *Brockett* v. *Johns*, i. 100.
10. When a cause is continued at the costs of the party, no execution can issue for them. The remedy is an attachment of contempt. *Fenwick* v. *Voss*, i. 106.
11. In a chancery attachment against a British bankrupt, the Court will permit the assignees to appear and release the attached effects, and to defend the suit, on their producing a notarial copy of the commissioner's proceedings. *Wilson* v. *Stewart*, i. 128.
12. An attachment of contempt for not attending as a witness, must not be served in the court-house.
If the witness arrives before service of the attachment and makes a reason-

ATTACHMENT, (*continued.*)
able excuse, the Court will countermand the attachment on payment of the cost of issuing it. *Davis* v. *Sherron*, i. 287; *United States* v. *Schofield*, i. 130.
13. An attachment for contempt in disobeying an injunction. *Munroe* v. *Harkness*, i. 157; *Munroe* v. *Bradley*, i. 158.
14. The defendant cannot appear to a chancery attachment in Virginia, without giving bail. *Mayor &c. of Alexandria*, v. *Cooke et al.* i. 160.
15. In a chancery attachment in Virginia, the Court may order the attached debt to be paid over to the plaintiff, on his giving security to refund, &c., although the plaintiff's right may be doubtful. *Wilson* v. *Dandridge*, i. 160.
16. A defendant discharged under the Insolvent Law of Pennsylvania, may appear here and discharge an attachment without giving special bail. *Davis* v. *Marshall*, i. 173.
17. The garnishee in a chancery attachment may, by leave of the Court answer, after bill taken for confessed. *Hartshorne* v. *Allison et al.* i. 199.
18. A witness cannot have an attachment for his fees until he has served an order of the Court on the party to pay them. *Sadler* v. *Moore*, i. 212.
19. In a judgment upon an attachment, interest cannot be added. *Power* v. *Semmes*, i. 247.
20. An acceptance, by the garnishee, of the defendant's draft in favor of a third person, before service of the attachment, binds the garnishee, and cannot be overreached by the attachment. *Tucker* v. *Marsteller*, i. 254.
Under the bankrupt law, an attaching creditor was only entitled to a ratable part of his debt with the other creditors; and that part was to be ascertained by the assignees under the direction of the commissioners. *Harmon et al.* v. *Jamesson*, i. 288.
22. A chancery attachment will not lie, in Virginia, to charge the effects of a deceased foreign debtor in the hands of a resident defendant. *Redfern* v. *Rumney*, i. 300.
23. Upon an attachment under the Maryland Act of 1795, c. 56, the plaintiff must prove his debt before he can obtain judgment of condemnation. *Stephenson* v. *Giberson*, i. 319.
24. *Quære*, whether attachment lies for unliquidated damages? *Ibid.*
25. To obtain an attachment under the Maryland Act of 1795, c. 56, it is not necessary that all the plaintiffs should make affidavit, nor that it should appear that they are all citizens of the United States.
The attachment and *capias* may be amended by leave of the Court, before condemnation. *Birch* v. *Butler*, i. 319.
26. This Court has power to send an attachment into Virginia for a witness in a civil cause, who lives within one hundred miles of the place of trial; and such attachment is to be directed to, and served by, the marshal of Virginia. *Voss* v. *Luke*, i. 331.
27. The Court will not continue a cause for the absence of a witness who has been summoned, and who lives within one hundred miles of the place of trial, if no attachment has been moved for, although he resides out of this district. *Wood* v. *Young*, i. 346.
28. The goods of an intestate cannot be attached by his creditors. Nor will a chancery attachment lie against the effects of a resident debtor. *Patterson* v. *McLaughlin*, i. 352.
29. A deposition *de bene esse* cannot be read in evidence if the deponent lives within one hundred miles of the place of trial, although he lives out of this district. *Park* v. *Willis*, i. 357.
30. An attachment will not lie for non-payment of the costs of a continuance, until after a rule to show cause; nor unless there has been a personal service of the order of the Court to pay the costs; nor unless the bill of costs state the particular items. *Dyson* v. *White*, i. 359.

ATTACHMENT, (*continued.*)

31. *Quære*, whether this Court can issue an attachment for a witness residing in Virginia, less than one hundred miles from this district? *Lewis* v. *Mandeville*, i. 360.
32. The Court will not grant an attachment against a party for not paying his witness, unless payment shall have been demanded by a person having authority to receive payment; and that authority must appear. *Nally* v. *Lambell*, i. 365.
33. An attachment for not returning a *habeas corpus* will not be issued until three days shall have expired after service of the writ. *United States* v. *Bollman et al.* i. 373.
34. In a chancery attachment, if the subpœna be served on the principal, the bill cannot be taken for confessed for non-appearance, as in ordinary cases in equity, but there must be an affidavit and publication, &c., according to the Virginia Act of 26th December, 1792. *Dean* v. *Legg et al.* i. 392.
35. Under the laws of Virginia, a *ne exeat* will not lie to restrain a garnishee. *Patterson* v. *Bowie et al.* i. 425.
36. The Court will grant a rule on a witness living in Baltimore, to show cause why he should not be attached for not attending according to summons. *Hodgson* v. *Butts*, i. 447.
37. Upon an attachment, the marshal cannot hold the party after the return-day, unless by an order of commitment. *Ex parte Burford*, i. 456.
38. The Court will send attachments into Maryland for witnesses who reside within one hundred miles of Washington, if they fail to attend according to summons. *Somerville* v. *French*, i. 474.
39. The proceedings in an attachment upon an assigned cause of action must be in the name of the legal plaintiff; and all the requisites of the statute must be complied with. *Davis* v. *Wyer*, i. 527.
40. If the defendant directs the garnishee to pay over the money in his hands to the first attaching creditor, and he agrees to do so, a creditor who afterward attaches, before the money is paid over, is not entitled to share it with the first attaching creditor. *Rudd* v. *Paine*, ii. 9.
41. In an action for a malicious attachment, the official return of the attachment is not conclusive, but may be contradicted by parol. *Mott* v. *Smith*, ii. 33.
42. If the indorser of a promissory note accept an order from the indorsee for the amount of the note, in favor of a third person; a subsequent attachment of the money in the hands of the indorser, by a creditor of the indorsee, will not avail him. *Whetcroft* v. *White*, ii. 96.
43. A judgment against the principal debtor, in a foreign attachment in Pennsylvania, is not evidence, in the District of Columbia, of a debt due by that debtor to the plaintiff. *Rickets et al.* v. *Henderson*, ii. 157.
44. An attachment for rent not due, is superseded by the discharge of the tenant under the Insolvent Law of the District of Columbia of the 3d of March, 1803, § 5. *Keene* v. *Jackson*, ii. 166.
45. Upon a common-law attachment under the Virginia Statute of 26th December, 1792, § 6, the Court may, in its discretion, suffer the principal debtor to appear without bail, and without discharging the attached effects, at the first term after the return of the attachment, to plead to the jurisdiction. *Locke* v. *Cannon*, ii. 186.
46. The clerk may have attachment for his fees. *Lee* v. *Patterson*, ii. 199.
47. The attachment first served is entitled to priority of payment. *Johnson* v. *Griffith*, ii. 199.
48. The attachment first served on the garnishee binds the effects in his hands, although the marshal has other and prior writs of attachment in his hands at the time of such service. *McCobb* v. *Tyler*, ii. 199.

ATTACHMENT, (*continued.*)

When the marshal has several writs of attachment put into his hands, he must return all the property as attached on each of them. *English* v. *Tyler*, ii. 200.

50. *Quære*, whether the writ which first comes to his hands or the writ first levied, has a preference, or whether the attaching creditor shall come in *pari passu*? *Ibid.*
51. An attachment under the Maryland Act of 1795, c. 56, against the property of a corporation aggregate, will be dissolved by its appearance without bail. *Nicholl* v. *Savannah Steamship Company*, ii. 211.
52. An attachment by a justice of the peace under the sixth section of the Virginia Act of 26th December, 1792, can only be issued by a justice of the county in which the defendant resides, or from which he is privately removing, or in which he absconds or conceals himself. *Sears* v. *Noon*, ii. 220.
53. An attachment under the Maryland Act of 1795, c. 56, will lie against lands and tenements in Alexandria county. *Hough* v. *Smoot*, ii. 318.
54. In attachments in chancery, under the statute of Virginia, the attaching creditors have priority according to the time of service of their respective attachments. *Grigsby* v. *Love*, ii. 413.
55. An affidavit made before a judge of one of the State courts, in order to obtain an attachment under the Maryland Act of 1795, c. 56, is not sufficient for that purpose, unless there be thereto annexed a certificate of the clerk of the Court of which he is a judge, or a certificate of the Governor, chief magistrate, or notary-public of such State, that the said judge hath authority to administer such oath. *Bolton* v. *White*, ii. 426.
56. In the affidavit and warrant for an attachment under the Maryland Act of 1795, c. 56, it is not necessary to state the plaintiff to be a citizen of the United States, or of any of the States. *Kurtz* v. *Jones*, ii. 433.
57. In order to obtain an attachment under the Maryland Act of 1795, c. 56, the affidavit must be positive as to the amount of the debt. *Munroe* v. *Cocke*, ii. 465.
58. When the issue is joined between the plaintiff and the garnishee for himself and his principal, the depositions must be entitled as of a suit between the plaintiff and garnishee, and not between the plaintiff and the principal defendant. *Baker* v. *Mix*, ii. 525.
59. In an attachment under the Maryland Act of 1795, c. 56, if the garnishee be taken and held to bail under the sixth section of that act, no judgment can be rendered against him until he has appeared. *Jones* v. *Kemper*, ii. 535.
60. The *capias* against the garnishee must not be "to answer to the plaintiff in a plea of trespass on the case, &c." but to appear at the return of the writ to make answer to such interrogatories in writing as he should, by rule of court, be required to answer, touching the property in his possession or charge, at the time of serving such writ of attachment, or at any other time; and to render his body to prison or pay the condemnation-money, if judgment should be rendered against him. *Ibid.*
61. A judgment of condemnation may, for irregularity, be set aside at a subsequent term. *Ibid.*
62. In case of an attachment by way of execution, if there be no appearance of the principal debtor or garnishee or other proceeding at the return-term of the writ, the attachment is discontinued. *Bank of Washington* v. *Brent*, ii. 538.
63. If the garnishee is only one of the members of a mercantile company indebted to the defendant, he cannot be chargeable alone as garnishee; nor can the garnishee be chargeable upon interrogatories, unless he admits that he is indebted to the defendant. *Ellicott* v. *Smith*, ii. 543.

ATTACHMENT, (*continued.*)

64. *Quære*, whether the Treasurer of the United States can be compelled to appear as garnishee, and is liable to judgment for money in his hands as Treasurer? *Averill* v. *Tucker et al.* ii. 544.
65. An agent for the payment of the salaries of the clerks in an executive department of the government of the United States is bound to appear as garnishee when summoned. *Ibid.*
66. *Quære*, whether the salary of an officer of the United States is liable to attachment. *Ibid.*
67. If money be deposited in a bank, the cashier is not liable as garnishee of the depositor. *Lewis* v. *Smith et al.* ii. 571.
68. If the garnishee be not the debtor of the defendant, he is not liable to judgment of condemnation. *Ibid.*
69. If the defendant himself could not recover against the garnishee, the plaintiff cannot. *Ibid.*
70. An attachment under the Maryland Act of 1795, c. 56, will not lie for a debt less than $20. *Dix* v. *Nicholls*, ii. 581.
71. Upon a chancery attachment in Alexandria county, D. C., against the effects of an absent debtor, the garnishee residing in the county of Alexandria, is not liable to the plaintiff for goods of the defendant which are in the garnishee's custody in Virginia, where the debtor himself resides. *Miller* v. *Hooe*, ii. 622.
72. If the resident garnishee is not indebted to the defendant, and has no effects of the defendant in his possession in this district, and the defendant himself is not found in the county of Alexandria, no decree can be rendered against either the garnishee or the defendant, and the bill must be dismissed; as this Court has not jurisdiction in the case. *Ibid.*
73. The assignment and delivery of a bill of lading and invoice of goods, *in transitu*, for valuable consideration, convey the legal title; and the goods cannot be attached as the property of the assignor. *Balderston* v. *Manro*, ii. 623.
74. The Court will set aside a judgment against the garnishee, obtained by surprise at a former term, and will quash the execution issued thereon. *Homans* v. *Coombe et al.* ii. 681.
75. An assignment of the debt by the defendant to a third person, with notice to the garnishee, before service of the attachment, cannot be given in evidence upon the issue of *nulla bona*, but must be pleaded specially. *Baker* v. *Mix*, iii. 1.
76. The oath to obtain an attachment under the Maryland Act of 1795, c. 56, may be made by one of the copartners, and need not state that he is the acting partner, nor that the other partners were absent. *Drake* v. *Cleveland*, iii. 3.
77. An attachment for not answering a bill in equity need not be made returnable to the rules, but may be issued by the Court returnable immediately to the Court. *Dowson et al.* v. *Packard*, iii. 66.
78. An attachment of contempt will lie against a master who attempts to remove his slave out of the jurisdiction of the Court, after he has notice or knowledge of the slave's petition for freedom; and the Court will also order the slave to be brought into court by the marshal, that he may be protected. *Negro Richard* v. *Van Meter*, iii. 214.
79. If a replevin be discontinued, the defendant is not guilty of a contempt in taking possession of the goods, they being no longer in the custody of the law. *Mitchell* v. *Wilson*, iii. 242.
80. A mere equitable interest in lands is not liable to attachment and condemnation by way of execution under the Maryland law of 1715, c. 40. *Sawyer* v. *Mortè*, iii. 331.
81. The marshal is not entitled to poundage upon the money and bank-notes of

ATTACHMENT, (*continued.*)
the defendant not taken into his actual custody, so as to make him chargeable therefor. *Ringgold* v. *Lewis*, iii. 367.

82. If goods be attached under the Maryland law of 1795, c. 56, and the defendant be taken on the *capias* before the return of the attachment, it will be dissolved, upon the personal appearance of the defendant in custody. *Cox* v. *Watkins*, iii. 629.
83. See ASSIGNMENT, 2. *King* v. *Gorsline*, iv. 150.
84. Upon attachment of the goods and effects of both and each of two joint debtors, bail must be given for both, in order to release the joint and separate effects. Bail will not be received for one only to discharge his separate goods. *Magee* v. *Callan*, iv. 251.
85. A witness, residing in Virginia, cannot be compelled by attachment to attend the Circuit Court of the District of Columbia, in a criminal cause; by the opinion of Mr. Justice Brockenborough. *Ex parte J. H. Pleasants*, iv. 314.
86. The Circuit Court of the District of Columbia has all the powers which, by law, were vested in the Circuit Courts of the United States on the 27th of February, 1801, and among others, the power to send attachments into any other district for witnesses in criminal cases. *United States* v. *Christiana Williams*, iv. 372.
87. The attaching creditor is not in a better condition than his debtor would have been in if the attachment had not been laid. *Miller* v. *Frink*, iv. 451.
88. See ASSIGNMENT, 3. *Ibid.*
89. The Court quashed an attachment issued upon one *non est*, returned upon a justice's warrant for a small debt; the defendant being a resident of the district. See the Acts of Maryland, 1791, c. 68, § 1; and 1715, c. 40. *Doyle* v. *Richards*, iv. 527.
90. An attachment of credits in the hands of the Chesapeake and Ohio Canal Company, is sufficiently served by notice to the clerk of the company. *Davidson* v. *Donovan et al.* iv. 578.
91. Goods distrained, in Maryland, for rent, and suffered by the landlord to be carried into the District of Columbia, where they were attached for a debt due by the tenant to a third person, may be recovered by the landlord by replevin, notwithstanding the attachment. *Calvert* v. *Stewart*, iv. 728.
92. If a petition for freedom be filed, and a bill for an injunction to restrain the Master from removing the petitioner out of the jurisdiction of the Court, the injunction may be granted on the affidavit of the petitioner. And if the injunction be not obeyed, an attachment may issue on a proper affidavit; and if the party be taken on the attachment and brought into court, he will not be discharged until he has given security as required by the rules and practice of the Court, that the petitioner shall be permitted to attend the trial, &c. *Negro John Thornton* v. *Irrine Davis*, iv. 500.
93. The Court upon an attachment for contempt in disobeying an injunction will not hear witnesses to contradict the affidavit, nor grant a rule to show cause. *Ibid.*
94. The Court will not grant an attachment on account of a misnomer in the injunction, nor receive a plea in abatement. *Ibid.*
95. If a witness summoned by a justice of the peace of Washington county, to attend before him and testify in a suit for a small debt, fail to attend accordingly, the justice may issue an attachment returnable to the Circuit Court, who will impose the penalty of two dollars and two thirds of a dollar, as required by section eight of the Act of Maryland of 1791, c. 68. The Court cannot impose a higher fine. *Ex parte John B. Gorman*, iv. 572.

ATTACHMENT, (*continued.*)

96. If a peremptory *mandamus* be superseded by a writ of error, from the Supreme Court of the United States who affirm the judgment, and, by mandate, order such proceedings to be had, as according to right and justice and the laws of the United States ought to be had, the Circuit Court will not issue an attachment against the defendant for contempt, in not obeying the former peremptory *mandamus*, which was superseded by the writ of error, but will issue an *alias* writ of peremptory *mandamus*. *United States* v. *Amos Kendall*, v. 385.
97. The Court will not issue an attachment upon a decree for the payment of money, but will leave the complainant to his remedy by *fi. fa.* or *ca. sa.* *White* v. *Clarke et al.* v. 401.
98. An attachment, to answer in a plea of trespass on the case, founded on a promissory note having a scrawl for a seal, will be quashed, and the plaintiff will not have leave to amend, nor to declare in debt. *Ten Broeck* v. *Pendleton*, v. 464.
99. A chancery attachment will not lie against the effects of a deceased person. *Henderson* v. *Henderson*, v. 469.
100. In an affidavit to obtain an attachment under the Maryland Act of 1795, c. 56, it is not necessary to aver that the plaintiff is a citizen of the county of Washington. *Decatur* v. *Young*, v. 502.
101. In order to obtain an attachment under the Maryland Act of 1795, c. 56, it is not necessary that the instrument of writing produced to the magistrate, should, upon its face, show a complete cause of action; nor is it necessary that the affidavit should state the plaintiff to be a citizen of the United States; it is sufficient if the magistrate states that the plaintiff is a citizen of one of the States. *Hard* v. *Stone*, v. 503.
102. It is not sufficient ground for quashing the attachment, that the copy of the short note, sent with the writ, has, by mistake of the clerk, the word cash instead of the word each. *Ibid.*
103. The Circuit Court (D. C.) has jurisdiction of an attachment issued by warrant of a justice of the peace. *Ibid.*
104. An attachment under the Maryland Act, 1795, c. 56, is dissolved by the death of the principal debtor and the appearance of his administrator. *Pancost* v. *Corporation of Washington*, v. 507.
105. When the judgment against the principal is for a larger sum than the real debt, to be released on payment of the real debt and interest until paid, upon which judgment an attachment is issued by way of execution, under the Maryland Act of 1715, c. 40, § 8, and judgment of condemnation is rendered, of the effects in the hands of the garnishee, and execution is issued thereon; the marshal may levy the whole debt and interest up to the time of payment, if there are effects of the principal to that amount in the hands of the garnishee. *Allen* v. *Croghan*, v. 517.
106. A garnishee, who received the goods of the defendant under a deed of trust fraudulent in law as to some of the creditors, if he acted *bonâ fide*, is entitled to a reasonable compensation for his services in taking care of and selling the goods, whoever may be entitled to the net proceeds. *Noyes* v. *Brent*, v. 551.
107. A mortgage of all of a man's stock in trade and debts due to him, to secure payment of a debt already due and payable by him to the mortgagee on demand, is void as to creditors, unless the possession accompanied and followed the deed, although acknowledged and recorded according to the Maryland law, 1729, c. 8, § 5. *Id.* 656.
108. If an attachment under the Maryland law, 1795, c. 56, and a *capias ad respondendum*, be both served while the defendant is attending the Court as a party in another cause, the attachment will be dissolved upon the arrest of the defendant on the *capias*, and the defendant will be dis-

ATTACHMENT, (*continued.*)
charged from the arrest, because privileged as a suitor in another cause. *McFerran et al.* v. *Wherry*, v. 677.
109. When a decree of this Court is affirmed by the Supreme Court of the United States, and a mandate is sent to this Court commanding that such proceedings be had in said cause "as according to right and justice, and the laws of the United States ought to be had, the appeal notwithstanding;" and this Court makes an order that the defendants without further delay, perform the decree thus affirmed, with costs; this order is not such a judgment or decree, as may be superseded under the Maryland Act, 1791, c. 67. *White* v. *Clarke et al.* v. 530.

ATTORNEY.
1. The Court will strike an attorney at law from the rolls for mal-practice, although it be not indictable. *United States* v. *Porter*, ii. 60.
2. An attorney may, in assumpsit, recover his legal fee; but a counsellor of this Court cannot support an action at law against his client for his fee as counsel, although he prove an express promise to pay it. *Law* v. *Ewell*, ii. 144.
3. The plea of the statute of limitations, pleaded after the rule-day, will not be ordered to be stricken out if the attorney, recently admitted to practice, was ignorant of the rule and practice of the court. *Wetzell* v. *Bussard*, ii. 252.
4. The Court will, on affidavit, reinstate a cause *non-pross'd* on a rule for security for costs laid on the plaintiff, who had no attorney in court; his attorney having died, and no rule served on the plaintiff to employ new counsel. *Cook* v. *Beall*, ii. 264.
5. The Court has authority to suspend an attorney of the Court from practice for a limited time, or to expel him entirely; and may, for that purpose, inquire in a summary manner, as to any charges of mal-practice alleged against him. *Ex parte Levi S. Burr*, ii. 379.
6. If the plaintiff examines his attorney as a witness, he waives his privilege, and upon a cross-examination, the attorney is bound to answer generally. *Crittenden* v. *Strother*, ii. 464.
7. The Attorney of United States for the District of Columbia is not bound by the second section of the Maryland Act, 1795, c. 74, to order writs of *ca. sa.* for fines, &c., on the application of the marshal; nor can the marshal order them without the authority of the District Attorney, who has a discretion, in that respect, which the marshal has no right to control. *Levy Court* v. *Ringgold*, ii. 659.
8. If there be two joint trustees with a joint power of attorney to sell, the trust cannot be executed by one alone, either in the lifetime of the other, or after his death. Upon the death of one, the trust does not survive to the other, unless such a provision be inserted in the deed of trust. *Boone* v. *Clarke*, iii. 389.
9. A power of attorney becomes invalid by the death of the principal, except so far as the attorney has an interest coupled with the power. *Ibid.*
10. Fidelity to his client, is one of the first requisites in the character of an honorable practitioner at the bar. That fidelity requires that he should maintain all the just rights of his client; but it extends no further. It will not justify any attempt to evade the fair operation of the law, or to impede the administration of justice. A fault on either side of the true line of honorable professional conduct, will equally meet the decided reprehension of the Court. *Ex parte G. L. Giberson*, iv. 503.

ATTORNMENT.
See ACTION ON THE CASE. *Brown* v. *Corcoran*, v. 610.

AUCTIONEER.

1. An auctioneer's bond, given to the Corporation of Georgetown by its corporate name, is void. It should be given to the mayor only, as required by the by-law. The license must be under the corporate seal. *Georgetown* v. *Baker*, ii. 291.
2. The Act of Virginia, 1796, "concerning corporations," which requires bond and security to be given by auctioneers, does not prescribe the condition of the bond, but leaves it to the discretion of the respective corporations; but when the condition has been fixed by a by-law, it cannot be dispensed with at the will of the corporation, unless that will be expressed in such a formal manner as to repeal the by-law. *Fowle* v. *Corporation of Alexandria*, iii. 70.
3. The auctioneer is bound by the instructions of the owner. If the price be limited, his duty is to set the goods up at that price. If they will not sell at the price limited, he must not sell. And if the goods perish because they cannot be sold at that price, the loss must fall on the owner. *Williams* v. *Poor*, iii. 251.

AUDITA QUERELA.

It seems that a purchaser of lands, bound by a judgment, may move to quash the execution upon its return; or may have an *audita querela*. *Jackson* v. *Bank of the United States*, v. 1.

AUDITOR.

1. See ACCOUNT, 1. *United States* v. *Rose*, ii. 567.
2. *Id.* 1, 2, 3, 4. *Barry* v. *Barry*, iii. 120.
3. The report of the auditor under the Maryland Act, 1785, c. 80, is *primâ facie* evidence of the amount due, upon the principles and evidence stated in the report; and if those principles and that evidence are approved by the Court, so much of the report may be read to the jury as shows the balance so stated; although before the jury was sworn, the defendant excepted to the evidence admitted by the auditor, and to his calculations, conclusions, and statements. *Bank of the United States* v. *Williams*, iii. 240.
4. Upon trial before a jury in an action at law, the report of the auditor to whom the cause had been referred under the Maryland Act, 1785, c. 8, § 12, to state the accounts of the parties, is *primâ facie* evidence of the balance due, if the principles upon which the account is stated are correct, and the evidence properly received by the auditor.

An account rendered by the defendant is proper evidence for the plaintiff before the auditor. *Bank of the United States* v. *Johnson*, iii. 228.

AUTHENTICATION.

The Acts of Congress respecting the authentication of the records of State Courts do not apply to the records of the courts of the United States. *Mason* v. *Lawrason*, i. 190.

AUTHORITY.

1. The authority of an agent need not be in writing; and may be proved by the testimony of the agent himself. *United States* v. *Baker*, i. 268.
2. In an action by the indorsee against the maker of a promissory note, the plaintiff need not produce written evidence of the authority of the indorser's agent to indorse. *Miller* v. *Moore*, i. 471.
3. After appearance entered at a previous term, it is too late to call for the authority to appear. *Rogers* v. *Crommelin*, i. 536.
4. An authority to indorse notes need not be under seal. *Bank of Washington* v. *Peirson*, ii. 685.
5. A power to sign any notes for the renewal of notes, is a continuing power to indorse notes for renewal. *Ibid.*

AUTHORITY, (*continued.*)

6. The authority of an agent to receive notices for his principal, ceases with the death of the principal, and will not bind his executors. *Ibid.*
7. An agent is a competent witness to prove his own authority, if not in writing; and is not incompetent by reason of his liability to either of the parties. *Welch* v. *Hoover*, v. 444.
8. A parol authority will support a written contract. *Ibid.*
9. Under a power of attorney from several persons to sign a joint promissory note, the attorney may make a joint and several promissory note; the purpose of the parties being to renew a joint and several note which had been discounted by the plaintiff; or, if the power was defective, the note was only void to the extent to which the attorney exceeded his authority; that is, as a several note, but was valid as a joint note. *Bank of Metropolis* v. *Moore*, v. 518.

AVERAGE.

1. The charges for entering a harbor for repairs, the surveyor's bill and port-charges, are items of general average, and are the subjects of general contribution. *Vowell* v. *Columbian Ins. Co.* iii. 83.
2. In adjusting a loss upon a policy for $10,000, on a cargo from Alexandria, D. C., to St. Thomas, and two other ports in the West Indies, and back to the United States, the value of the cargo is to be ascertained at the port from which the vessel last sailed before the loss; and if freight has been there earned, and not paid, and is not chargeable upon the salvage, it is an addition to the value of the original cargo upon which the loss is to be adjusted. *Catlett* v. *Columbia Ins. Co.* iii. 192.

AWARD.

1. See ARBITRATION, 10, 11, 12. *Goldsborough* v. *McWilliams*, ii. 401.
2. *Id.* 13 — 17. *Masterson* v. *Kidwell*, ii. 699.

BAIL.

1. Special bail will not be required upon setting aside an office-judgment, if appearance-bail was not required. *Shean* v. *Towers*, i. 5.
2. Bail will not be required in an action against an indorser by his immediate indorsee, while another action is pending against him by a remote indorsee. *Johnson* v. *Harris*, i. 35.
3. Bail cannot be required of a *feme covert* in a civil action. *Henry* v. *Cornelius et ux.* i. 37.
4. A motion to appear without bail will not be heard before the appearance-day, if the defendant be not in actual custody. *Olive et al.* v. *Mandeville*, i. 38.
5. It is no plea to *scire facias* against bail, that the principal had been confined in prison in another jurisdiction ever since the judgment. *Gadsby* v. *Miller*, i. 39.
6. Bail is not discharged by a discontinuance of the action at the rules, if it be reinstated. *Ibid.*
7. In slander, bail is not required if the affidavit does not state the words spoken, and that the defendant is about to leave the district. *Lanstraaz* v. *Powers*, i. 42.
8. After plea by appearance-bail, the defendant may give special bail, and plead *de novo*. *Pickett* v. *Lyle*, i. 49.
9. The Court will not interfere to prevent bail from seizing the principal, further than to keep order in Court. *Smith* v. *Catlett*, i. 56.
10. Bail may be required in trespass for cutting up a boat. *Voss* v. *Tuel*, i. 72.
11. Upon calling the appearance-docket, if the defendant offers to appear, the Court will not give the plaintiff's attorney time to procure an affidavit to hold the defendant to special bail. *Meade* v. *Roberts*, i. 72.

BAIL, (*continued.*)

12. A discharge of the principal under a commission of bankrupt, issued after the return of the *scire facias* against the bail, is not a discharge of the bail. *Bennett* v. *Alexander*, i. 90.
13. Bail residing in Alexandria county cannot be received in an action in Washington county. *Coningham* v. *Lacy*, i. 101.
14. Where two become bail jointly and severally, and two writs of *scire facias* are issued, and one of the bail surrenders the principal, he must pay the costs upon both writs of *scire facias*. *Pennington* v. *Thornton*, i. 101.
15. The Court will not commit a bankrupt, for want of bail, who has surrendered to the commissioners, and whose examination is not closed, although the forty-two days have expired. *Lingan* v. *Bayley*, i. 112.
16. In an action against a certificated bankrupt, by an indorser who has paid the money since the date of the certificate, the bankrupt will be permitted to appear without special bail; the note having become payable before any dividend made, and provable, by the holder, under the commission. *Baker et al.* v. *Vasse*, i. 194.
17. A recognizance of bail, in a civil action, taken out of court, is only *de bene esse;* and the marshal, to save himself, must take a bail-bond in all cases. *Poe* v. *Mounger*, i. 145; *Bennett* v. *Pendleton*, *Id.* 146.
18. See ATTACHMENT. *Mayor and Commonalty of Alexandria* v. *Cooke*, i 160.
19. A defendant, discharged under the Insolvent Law of Pennsylvania, may appear here and discharge an attachment without giving special bail *Davis* v. *Marshall*, i. 173.
20. The defendant may give special bail at any time during the return term, although the plaintiff may have taken an assignment of the bail-bond. *Rhodes* v. *Brook*, i. 206.
21. Officers of the Court cannot be bail without leave. *General Rule*, i. 246.
22. Bail will not be discharged by a surrender of the principal, or the production of his discharge as an insolvent, at the third term after the return of the *scire facias*. *Bowyer* v. *Herty*, i. 251.
23. The administrator of appearance-bail cannot be allowed to appear as appearance-bail and plead for the principal. *Finley* v. *McCarthy*, i. 266.
24. If there be no declaration, the Court will not require special bail unless the plaintiff appear at the return of the writ. *Thompson* v. *Cavenaugh*, i. 267.
25. An affidavit to hold to bail must be positive. *Smith* v. *Watson*, i. 311.
26. An affidavit, in the form required by the Maryland Act of 1729, is sufficient to hold the defendant to bail. *Graham* v. *Konkapot*, i. 313.
27. If bail has not been required upon the *capias ad respondendum*, it will not, upon setting aside the office-judgment, be required without affidavit. *Gordon* v. *Riddle*, i. 329.
28. In Virginia, special bail, in an action of debt upon a judgment, cannot be required by the indorsement of an attorney. *Wray* v. *Riley*, i. 361.
29. Affidavit by administratrix to hold to bail. *McLaughlin* v. *Johns*, i. 372.
30. Affidavit "according to his knowledge and belief," is not sufficient to hold to bail. *Jolly* v. *Rankin*, i. 372.
31. An affidavit to hold to bail in assault and battery, must state some certain amount of damages. *Mecklin* v. *Caldwell*, i. 372.
32. In assault and battery, the affidavit to hold to bail must state some specific injury to the person of the plaintiff; and must be positive as to some amount of damages. *Id.* i. 400.
33. Affidavit that the defendant is justly indebted to the plaintiff one thousand pounds of crop tobacco, is sufficient to hold the defendant to bail. *Greenleaf* v. *Cross*, i. 400.

BAIL, (*continued.*)
34. A bond filed, for payment of money, is sufficient to hold the defendant to bail. *Aldridge* v. *Drummond*, i. 400.
35. The Court will not order the defendant's appearance to be struck out so as to charge the marshal. *Wood* v. *Dixon*, i. 401.
36. A creditor may resort to his collateral security, although he has taken and discharged the bail of his principal debtor upon a *ca. sa.* *Hartshorne* v. *McIver*, i. 421.
37. Upon surrender of the principal to the sheriff, by the bail, under the law of Virginia, notice must be given immediately to the creditor, his attorney, or agent. The knowledge of the plaintiff's attorney is not sufficient. *Maynadier* v. *Wroe*, i. 442.
38. When a bond for the payment of money is filed, an affidavit to hold to bail is not necessary, and the Court will not mitigate bail upon affidavit that the whole is not due; nor receive, as bail, persons not residing in the district. *Lee* v. *Welch*, i. 477.
39. The discharge of the principal under the insolvent act before the return of the *ca. sa.* may be pleaded in bar to a *scire facias* against the bail. *Byrne* v. *Carpenter*, i. 481.
40. A justice of the peace cannot discharge a prisoner who has been committed for trial on a charge of felony; nor can he take money in lieu of bail. *United States* v. *Faw*, i. 486.
41. After plea of misnomer in abatement, the Court will not suffer the record to be amended but on payment of costs, and a discharge of the bail. *Payen* v. *Hodgson*, i. 508.
42. A resident of Alexandria may be held to bail in Washington in an action of debt founded upon a judgment in an action of debt in Virginia, in which bail was given, although no previous writ had been issued against the defendant in Alexandria county. *Gordon* v. *Lindo*, i. 588.
43. The Court will not, upon affidavit of want of merits, dispense with special bail. *Gardner* v. *Lindo*, i. 592.
44. The defendant had been discharged under the Insolvent Law of Maryland, in 1809, since the cause of action accrued; the bail produced a copy of the record of discharge, and an *exoneretur* was allowed. *Baugh* v. *Noland*, ii. 2.
45. See AFFIDAVIT, 1. *Bartleman* v. *Snarr*, ii. 16.
46. *Id.* 2. *Travers* v. *Hight*, ii. 41.
47. *Id.* 4. *Miller* v. *Wheaton*, iii. 41.
48. *Id.* 5. *Young* v. *Moriaty*, ii. 42.
49. *Id.* 6. *Way* v. *Selby*, ii. 44.
50. The marshal may justify appearance-bail at the second term after exception taken at the rules. *Quære.* *Brent* v. *Brashears*, ii. 59.
51. If the principal has been discharged under the Insolvent Law of Maryland, the bail will be exonerated. *Burns* v. *Sims's Bail*, ii. 75.
52. Special bail will be required in an action of covenant for rent, upon a proper affidavit. *Wager* v. *Lear*, ii. 92.
53. If the principal be discharged under the insolvent act before the bail is fixed; and the bail, being taken in execution, give a note for the amount of the debt, the Court, upon the return of the execution, will, on motion, order the note to be given up to be cancelled. *Bussard* v. *Warner's Bail*, ii. 111.
54. Bail will not be required in an action upon a replevin-bond, although in the action of replevin there had been judgment for a return, &c. *Jenkins* v. *Porter*, ii. 116.
55. In debt on a bond of more than twelve years' standing, bail will be required; the plaintiffs being residents of Virginia. *Crail's Executors* v. *Hilton*, ii. 116.

BAIL, (*continued.*)

56. Bail in Pennsylvania may follow their principal into the District of Columbia, and take him out of the custody of the person who has become bail for him in that district; and if the principal be brought into the Circuit Court of that district to be surrendered to the marshal, he will be ordered by the Court to be given up to the Pennsylvania bail. *Sharpless* v. *Knowles*, ii. 129.
57. Bail will not be exonerated, upon *scire facias*, by the discharge of the principal under the insolvent law, unless the discharge be before the appearance-day of the first *scire facias* returned executed, or of the second returned *nihil*. *Munroe* v. *Towers*, ii. 187.
58. If the principal be discharged under an insolvent law of one of the States, after the judgment against him in this Court, and the motion to discharge the bail be made at the return term of the *scire facias* against the bail, the Court will discharge him, upon payment of the costs of the *scire facias*. *King* v. *Sim*, ii. 234.
59. In order to hold the defendant to bail in debt on a bond, it need not be produced until oyer demanded, if there be a sufficient affidavit of debt. *Day* v. *Hackley*, ii. 251.
60. The Court will not decide upon the merits, on a motion to appear without bail. *Ibid.*
61. The defendant has the whole of the return term to appear in; and if the plaintiff withdraw his action before the end of the term, he cannot maintain a suit upon the bail-bond. *Ringgold* v. *Renner*, ii. 263.
62. After *scire facias* returned, the bail will be exonerated if the principal be in the penitentiary of one of the States, before any execution returned against him, and so continue to be confined until the return of the *scire facias*. *Wormsley* v. *Beedle*, ii. 331.
63. If the marshal upon a *capias ad respondendum*, be amerced debt and costs *nisi*, the defendant may, in or before the next term, give bail and exonerate the marshal. *Heyer* v. *Wilson*, ii. 369.
64. Upon motion of the special bail at the return of the *scire facias*, the Court will set aside the original judgment against the principal, for irregularity, and will quash the *scire facias* against the bail. *Ault* v. *Elliot*, ii. 372.
65. If special bail be taken out of court by two justices of the peace, by recognizance, there must be two sureties. *Thomas* v. *Elliot, bail of Morte*, ii. 432.
66. In an attachment under the Maryland Act of 1795, c. 56, if the garnishee be taken and held to bail under the 6th section of that act, no judgment can be rendered against him until he has appeared. *Jones* v. *Kemper*, ii. 535.
67. See AFFIDAVIT, 12. *Winter* v. *Simonton*, ii. 585.
68. *Id.* 13. *Young* v. *Palmer*, ii. 625.
69. *Id.* 14. *Barrell* v. *Simonton*, ii. 657.
70. Bail will not be required in an action upon a bond with a collateral condition. *Barbour* v. *Russell*, iii. 47.
71. In ordinary cases of libel, bail is not required without some special reason other than the publication of the libel itself. *Withers* v. *Thornton*, iii. 116.
72. The Court will not order an execution against bail to be stayed, because a writ of error has been taken out by the principal, which is still pending in the Supreme Court, it not having been taken out in time to be a *supersedeas;* nor will they grant an injunction for the like cause. *Foyles* v. *Law*, iii. 118.
73. If the bail pay the debt upon execution, and take an assignment of the execution, which is afterward quashed, he can recover the money from

BAIL, (*continued.*)
the assignee of the original plaintiff, to whom he paid it. *McDaniel* v. *Riggs*, iii. 167.
74. If the affidavit to hold to bail be in itself sufficient, the Court will not, on a motion to appear without bail, inquire into the merits of the case. *Laverty* v. *Snelling*, iii. 290.
75. An affidavit that the defendant is justly indebted to the plaintiff in a certain sum, for goods sold and delivered to a third person upon a written guaranty of the defendant, is sufficient to hold the defendant to bail. *Ibid.*
76. If the affidavit misname the defendant by mistake of the plaintiff's attorney, the "Court will give time to have the mistake corrected." *Tilley* v. *Tharpe*, iii. 290.
77. Upon a motion to appear without bail, the Court will not examine the merits of the case. *Lee* v. *Gamble*, iii. 374.
78. If the principal be discharged under a law of one of the States, the bail will be discharged here. *Harrison* v. *Gales*, iii. 376.
79. If, upon leave to amend, the plaintiff add a count upon a cause of action, which could not be given in evidence upon the original declaration as sent out with the writ, or which is not contained in the affidavit to hold to bail, the bail must be discharged. *Hyer* v. *Smith*, iii. 437.
80. Upon an informal bond given by a marshal, payable to the President of the United States and his successors, instead of to the United States, the Court held the defendant to bail upon a certificate of defalcation from the Treasury Department. *Andrew Jackson* v. *John Simonton*, iv. 12.
81. In a *scire facias* against bail in *detinue* upon a recognizance in which the bail undertook that his principal, if cast in the suit, should restore to the plaintiff the slave detained, if to be had; "if not to be had, he would pay and satisfy the price of her and such damages as should be adjudged to the said plaintiff, or render his (the defendant's,) body to prison in execution for the same; or that he (the said bail,) will do it for him," it is a good plea in bar, that no *ca. sa.* had been issued against the principal. *Barnard* v. *McKenna*, iv. 130.
82. See AFFIDAVIT, 2. *Clarke* v. *Druet*, iv. 142.
83. See AMENDMENT, 2, 3. *Carrington* v. *Ford*, iv. 231.
84. See ATTACHMENT, 2. *Magee* v. *Callan*, iv. 251.
85. A discharge under the Insolvent Act of the District of Columbia, does not affect the rights of a non-resident creditor, unless the debtor be confined at his suit at the time of the discharge. Special bail will therefore be required, notwithstanding such discharge. *Hauptman* v. *Nelson*, iv. 341.
86. See AFFIDAVIT, 3. *Stettinius* v. *Orme*, iv. 342.
87. Bail in slander will be required upon the plaintiff's affidavit that the words were maliciously uttered; that the defendant is a transitory person; and about to leave the district; and that the plaintiff verily believes that she has suffered damages to a certain amount. *Doyne* v. *Barker*, iv. 475.
88. When the marshal "has arrested a person charged with a misdemeanor, he may take him to a justice of the peace, to give bail, by way of recognizance for his appearance in Court to answer for the offence; and the marshal is not bound to take the bail-bond himself. A recognizance thus taken is valid. *United States* v. *Wilburn*, iv. 478.
89. In an indictment against a justice of the peace for taking insufficient bail in a criminal case, it is not necessary to state in what respects the bail was insufficient, nor to set out the security taken; nor to aver that the defendant ordered the offender to be discharged from the arrest. *United States* v. *Robert Clark*, iv. 506.
90. In a case clearly bailable by law, to require larger bail than the prisoner can give, is, in effect, to refuse bail. The discretion of the magistrate in

BAIL, (*continued.*)
taking bail in a criminal case, is to be guided by the compound consideration of the ability of the prisoner to give bail, and the atrocity of the offence. *United States* v. *Richard Lawrence*, iv. 518.

91. The prisoner having been fully committed for trial upon a charge of an assault on the President of the United States, with intent to kill and murder him, the chief judge refused to issue a *habeas corpus* to bring him up for the purpose of examining witnesses to prove his insanity, and for that cause to discharge him from the common gaol, "and to secure the public peace by proper restraint." *Ibid.*
92. If the prisoner be acquitted by the verdict of the jury, on the ground of insanity, the Court will remand him to the custody of the marshal, on being satisfied that it would be dangerous to permit him to be at large while under mental delusion. *Ibid.*
93. If the indictment does not charge an indictable offence, the magistrate who takes the bail, has a discretion as to the amount; and no corrupt motive can be imputed to him on account of the smallness of the amount in which the bail is taken. The act, not being illegal, the Court will not permit evidence to be given of a corrupt motive. *United States* v. *Fleet Smith*, iv. 727.
94. If it appear upon the whole record, on an indictment for a misdemeanor, that the offence was committed more than two years before the indictment was found, the defendant may avail himself of that defence by a general demurrer. *United States* v. *Richard H. White*, v. 368.
95. A recognizance to appear in court from day to day, to answer to a certain indictment, and not to depart without the leave of the Court, is not discharged by the quashing of that indictment, but remains in force until the defendant has leave from the Court to depart; and if a new indictment be found, he and his bail are bound for his appearance to answer such new indictment. *Ibid.*
96. A certificate, in the usual form, by the officers of the treasury of the United States, that a certain balance is due by the defendant to the United States, is not sufficient cause for bail. *United States* v. *Smith*, v. 484.
97. The affidavit to hold to bail must show that the debt was due at the time of issuing the *capias*. *Hull* v. *Myers*, v. 484.
98. In actions upon the case for uncertain damages, the Court will mitigate the bail according to circumstances. *Sanderson* v. *Serat*, v. 485.
99. In a question of bail, the Court will not take into consideration a set-off claimed by the defendant. *Robbins* v. *Upton*, v. 498.
100. In a suit upon protested bills of exchange, the Court will not require an affidavit of the amount due upon the bills in order to hold the defendants to special bail. *Ibid.*
101. It seems to be no objection to bail, that he is indorser of the paper upon which the suit is brought. *Ibid.*
102. In an action upon the case for a libel, the damages were laid at $20,000, and the plaintiff in his affidavit averred damages to the same amount. The Court required the bail to justify to the amount of $500 only. *Mayo* v. *Smith*, v. 569.
103. The clerk of the House of Representatives of the United States, is not personally responsible for damages for refusing to give the public printing to a person to whom the preceding clerk had promised it; and therefore cannot be held to bail in an action upon the case founded upon such refusal. *Davis* v. *Garland*, v. 570.
104. If the defendant has been discharged under the Insolvent Law of Maryland, the bail will be exonerated. *Claggett* v. *Ward*, v. 669.

BALTIMORE AND OHIO RAILROAD COMPANY.

1. The time given by Act of Congress, March 2, 1831, c. 84, to extend and

BALTIMORE AND OHIO RAILROAD COMPANY, (*continued.*)
construct the Baltimore and Ohio Railroad, into and within the District of Columbia, was extended by the Act of February 26, 1834, c. 11, to another period of four years. The Act of March 3, 1835, c. 38, is not void, because its title misrecites the date of the act to which it is supplementary; nor is it confined to the mere construction of the road; but gives authority also to condemn land for the use of the company; nor is it void because its title purports it to be an act supplementary to an act which expired by its own limitation; it being revived by a subsequent act. *Baltimore and Ohio Railroad Co.* v. *Van Ness*, iv. 595.

2. If the Act of 1831 expired by its own limitation, it was revived by the Act of February 26, 1834. *Ibid.*
3. It is not necessary that the jury should be sworn upon the lot to be condemned. It is sufficient if they meet on the lot. *Ibid.*
4. Notice, on the 27th of April, that the jury would meet on the land, on the 1st of May, to take the inquisition, is sufficient. *Ibid.*
5. The railroad is a road for public use, and land may be taken therefor, upon just compensation being made. *Ibid.*

BANK.

1. The 11th article of the association called "The Union Bank of Georgetown," which declares that every person dealing with them, "disavows having recourse, on any pretence whatever, to the person or separate property of any present or future member of the company," does not prevent a laborer from recovering judgment at law against the individual members of the association who employed him; but they may be relieved in equity. *Davis* v. *Beverly and Riggs*, ii. 35.
2. A note of an unincorporated bank, "payable out of the joint funds thereof and no other," is a promissory note within the meaning of the Maryland Statute of 1799, c. 75, § 1. *United States* v. *Smith*, ii. 111.
3. If a bank discount a note, knowing that it was the intention of the party offering it, that the proceeds should be applied to the discharge of a particular note held by the bank, those proceeds cannot be applied, by the bank, to the discharge of any other note. *Bank of Alexandria* v. *Saunders*, ii. 183.
4. The private banking institution, known by the name of the Union Bank of Alexandria, had not, before it obtained its charter, any specific lien on the stock of its stockholders. *Neale* v. *Janney*, ii. 188.
5. A party to a note discounted by a bank, is not bound by the special and particular usage of such bank, unless upon his agreement, express or implied. *Bank of Alexandria* v. *Deneale*, ii. 488.
6. If a bank receive a note to be collected according to the known and established mode of transacting business at that bank, it is not liable to damages for omitting to demand payment on Saturday when the third day of grace was Sunday; it being the known and established mode of transacting business, in that bank, in such a case, not to demand payment until Monday. *Patriotic Bank* v. *Farmers Bank of Alexandria*, ii. 560.
7. If the teller of a bank receive, as cash, the check of an individual of good credit upon another bank, in which it afterwards appears that he had no funds; and if, in taking such a check he did only what was usual in the ordinary course of the trade and business of banking and the usage of banks in like circumstances, his so taking it is not a breach of the condition of his official bond, to make good to the said bank all damages it should sustain through his unfaithfulness or want of care. *Union Bank* v. *Mackall*, ii. 695.
8. If the teller of a bank, after receiving, as cash, an invalid check upon another bank, consent to take it as his own and look to the drawer of the

BANK, (*continued.*)
check for the payment of it, he cannot afterward, without the consent of his bank, return the check and throw it upon them. *Ibid.*

9. *Quære*, whether the official bond of the teller of a branch bank of the United States be void because not taken conformably with the sixth article of the rules and regulations of the government of the Offices of Discount and Deposit of the Bank of the United States. *Bank of the United States* v. *Brent*, ii. 696.
10. The official bond of the teller is not void because executed fourteen days after he had entered upon the duties of his office. *Ibid.*
11. Money deposited in a bank in the name of a firm, cannot be drawn out by the individual check of one of the firm, in his own name only; and if the bank pay such a check out of the joint funds, it can only justify itself by showing that the money thus drawn was applied to the use of the firm. It is no excuse for the bank, in paying out the joint funds upon the individual check, that the partner, who drew the check, told the bank officer that it was drawn on the joint account, and drawn in his individual name by mistake, and directed him to pay it, and any others of the like kind which he might draw, out of the joint funds. *Coote & Jones* v. *Bank of the United States*, iii. 50.
12. The partner thus drawing, and who is one of the plaintiffs, is not a competent witness for the defendants. *Ibid.*
13. An indictment under the sixteenth section of the Act of Congress of March 3d, 1825, "more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," must state that the defendant was employed in the bank, or an office of discount and deposit, &c. in some State or territory of the United States. *United States* v. *Forrest*, iii. 56.
14. The certainty required in an indictment is certainty to a certain intent; certainty to a common intent is not sufficient. Nothing material can be taken by intendment. From the averment that the defendant was a bookkeeper in the Office of Discount and Deposit, the Court, upon demurrer to the indictment, cannot infer that he was a clerk or servant employed in such office. *Ibid.*
15. A count, upon the same section, for embezzlement, must aver that the thing embezzled came to his hands or possession by virtue of his employment. It is not sufficient to state that it came to his hands "as bookkeeper," or "in virtue of his office as bookkeeper," or "while he acted as bookkeeper." It must appear that he had authority from the bank to have it in his custody or possession at the time of the embezzlement. It is not necessary that the thing embezzled should be the property of the Bank of the United States; nor is it necessary to aver it to be the property of any particular person; but it must be averred to have been fraudulently embezzled. "Feloniously," will not supply the place of "fraudulently." The offence must be charged in the words of the act. A check is not, by name, made the subject of embezzlement. And *quære*, if it be a paid or cancelled check, whether it can be included in the description, "other valuable security or effects?"

Quære, whether the District of Columbia was a territory within the meaning of the act? *Ibid.*

16. The stockholders of an unincorporated banking company are individually liable, in equity, to the holders of the notes of the company issued while they were stockholders, notwithstanding an article of their association declares that the joint stock or property of the company should alone be responsible, &c. The date of each note is *primâ facie* evidence of the time it was issued.

The holder may have relief in equity to the full nominal amount of the

BANK, (*continued.*)
notes held by him, without showing that he gave value therefor. Each stockholder is liable to the full extent of all the notes held by the plaintiff and issued while he was a stockholder. It is not necessary that the members of the company, named in the bill but not served with process to appear, should be parties to the suit; although the bill, as to them, should be taken for confessed. *Riggs* v. *Swann et al.* iii. 183.

17. The condition of the teller's bond, "faithfully to perform all the duties assigned to him in said bank and make good to the said bank all damages which the same shall sustain through his unfaithfulness or want of care," comprehends damages arising from his want of care as well as from his unfaithfulness.

The words, "six months," in the fourth section of the Act of Congress of March 2d, 1821, "to extend the charters of certain banks in the District of Columbia," mean six calendar months.

The teller's bond, issued under the original charter, covered defalcations arising under the extended charter; and after the time when the charter would have expired but for such extension.

It was not necessary that the teller should be appointed yearly and from year to year; and an interval of three days, during which the teller continued to act as such, without being reappointed, did not destroy the plaintiff's right of action upon the bond for damages incurred after such interval, by the teller's want of care.

Under this bond the defendants are bound to save the plaintiffs from all loss arising from any want of care of the teller, if by any degree of care on the part of the teller it might have been avoided.

The neglect of the cashier to settle the daily accounts of the teller according to the by-law of the bank, does not discharge the sureties. The usage of other banks requiring only reasonable care and diligence, cannot affect the express condition of the bond. *Union Bank* v. *G. Forrest*, iii. 218.

18. A check drawn by the defendant in favor of the plaintiff or bearer with the bank's cancelling mark upon it and produced by the defendant, is not evidence of money paid to the plaintiff. *Lowe* v. *Mc Clery*, iii. 254.

19. In June, 1819, the practice of the Bank of Columbia was not to give out notes for protest until three o'clock on the third day of grace. The time for demand, notice, and protest of a promissory note discounted at a bank, depends upon the custom of the bank; and a person who indorses such a note, with knowledge of the custom, is bound thereby. *Bank of Columbia* v. *McKenny*, iii. 361.

20. Upon the trial of an indictment for stealing a note of the Bank of the United States, it is not necessary that the United States should prove that it was a genuine note of that bank otherwise than by producing the note itself; nor that it was a note of a chartered bank. *United States* v. *Jane Byers*, iv. 171.

21. If the charter of a bank indebted to the United States expires, the United States have no remedy against the debtors of the bank if there was no actual assignment to the United States before the expiration of the charter. *United States* v. *Amos Alexander et al.* iv. 311.

22. The Corporation of Alexandria is authorized to tax the Farmers Bank of Alexandria, and to collect the tax by distress and sale of the goods of the bank. *Farmers Bank* v. *Fox*, iv. 330.

23. An indorsement to the cashier of a bank is virtually an indorsement to the bank itself, and may be so declared upon. *Bank of the United States* v. *Davis*, iv. 533.

24. An indictment under the eighteenth section of the charter of the late Bank of the United States, (April 10th, 1816,) for uttering as true a forged

BANK, (*continued.*)
note of that bank, must aver that it was made "in imitation of, and purporting to be a bill or note issued by order of the president, directors, and company of the said bank;" but, without such an averment it may be a good indictment under the eleventh section of the Penitentiary Act (D. C.) *United States* v. *Noble*, v. 371

25. Notwithstanding the expiration of the term for which the corporation was created, its corporate capacity continued to exist, under the twenty-first section of the charter for two years, for the final settlement and liquidation of its affairs, and during that period the bank was liable to be injured by the forgery of its notes; and such forgery, committed within the two years, was properly averred in the indictment to be "to the prejudice of the right of, and with intent to defraud, the President, Directors, and Company of the Bank of the United States." *Ibid.*
26. Upon an indictment for uttering forged bank-notes, evidence may be given on the part of the United States that a parcel of counterfeit checks and drafts on other banks, and others printed on bank-paper not filled up, were found in the defendant's possession. *Ibid.*
27. In an indictment under the Penitentiary Act, (D. C.) for stealing bank-notes, *quære*, whether it is not necessary to state the name of the bank and the date of the notes. *United States* v. *Negro Frank Pearl*, v. 392.
28. A written contract, under the hands and seals of the president and cashier of a bank, without further evidence of the authority of the president and cashier to make the contract, is admissible evidence in an action against the bank. *Guttschlick* v. *Bank of the Metropolis*, v. 435.
29. The bank to which an inland bill is transmitted for collection through the intervention of another bank, becomes the agent of the payee, and answerable to him alone for any breach of its duty in relation to the bill. *Farmers Bank* v. *Owen*, v. 504.
30. If a bank discounts a note made payable directly to itself, and takes the interest in advance for the time the note has to run, it is not usury, such being proved to be the usage of the banks. *Union Bank* v. *Corcoran*, v. 513.
31. The debts due to the late Bank of the United States, on the 3d of March, 1836, were not extinguished by the expiration of the term for which the corporation was created; and it had a right to use its corporate name, style, and capacity for a further period of two years for the final settlement of its affairs. A note given after the 3d of March, 1836, to the plaintiff, (who was an agent of the Bank of the United States,) by way of renewal of a note due before that day, was not void, nor was it necessary to use the name, style, or capacity of the bank, to enable the plaintiff to recover upon such a note. *Smith* v. *Frye*, v. 515.

32. See AUTHORITY 3. *Bank of the Metropolis* v. *Moore*, v. 518.

BANK OF ALEXANDRIA.

1. The Bank of Alexandria, under its charter, had a right to have its causes tried at the first term, and to have the writ returned during the term. *Bank of Alexandria* v. *Henderson*, i. 167.
2. The Bank of Alexandria, under its first charter, could maintain an action against an indorser of a note made negotiable at that bank, without first bringing suit against the maker. *Bank of Alexandria* v. *Wilson*, i. 168.
3. The Bank of Alexandria, under its old charter, was entitled to judgment at the first term. *Bank of Alexandria* v. *Davis*, i. 262; *Bank of Alexandria* v. *Young*, *Id.* 458.
4. The charter of Alexandria is a public act. *Ibid.*
5. The Bank of Alexandria, in discounting notes, may deduct the whole interest for the whole time they have to run. *Bank of Alexandria* v. *Mandeville*, i. 552.

BANK OF ALEXANDRIA, (*continued.*)

6. The Bank of Alexandria, in 1807, was bound to demand payment of the maker, and to give notice to the indorser, before they could maintain an action against him. *Bank of Alexandria* v. *Robert Young*, ii. 52.

BANK OF COLUMBIA.

1. An execution issued by order of the President of the Bank of Columbia, without any previous judgment, under the fourteenth section of its charter, must show, upon its face, all the facts necessary to justify the clerk in issuing it. *Okely* v. *Boyd*, ii. 176.
2. An execution ordered by the President of the Bank of Columbia, without judgment, ought not to include the notary's fee for protest; but if the bank release the fee, the Court will not quash the execution. *Bank of Columbia* v. *Bunnell*, ii. 306.
3. But such an execution may include five dollars for an attorney's fee, and the interest which has accrued upon the debt up to the time of ordering execution. *Ibid.*
4. See AFFIDAVIT, 10. *Bank of Columbia* v. *Cook*, ii. 574.
5. Upon return of an execution issued by order of the President of the Bank of Columbia, the Court will not quash it because it appears on the face of the note that it had been due more than three years before the issuing of the execution. *Ibid.*
6. The Court will permit the defendant, upon return of the execution issued by the President of the Bank of Columbia, to plead the statute of limitations. *Ibid.*
7. Upon the return of an execution issued by the President of the Bank of Columbia, if the defendant disputes the debt, the Court will order an issue to be made up, and will permit the defendant to plead the statute of limitations. *Bank of Columbia* v. *Sweeny*, ii. 704.
8. The issuing of the execution by the President of the Bank of Columbia, under the fourteenth section of its charter, 1793, c. 30, is the commencement of the action in regard to the statute of limitations. *Bank of Columbia* v. *Moore*, iii. 292.
9. An order, for an execution, by the President of the Bank of Columbia, under the fourteenth section of its charter, is not a judgment, and a second execution cannot be issued without a new order. The execution is but the commencement of the suit, and if not prosecuted it is discontinued. *Bank of Columbia* v. *Baker*, iii. 432.
10. A *fieri facias* issued by order of the President of the Bank of Columbia, under the fourteenth section of its charter, bound the lands and goods of the debtor from the time of the delivery of the writ to the marshal, if it bound them at all. *Smith* v. *Bank of Columbia*, iv. 143.
11. The fourteenth section of the charter of the Bank of Columbia granted by Maryland, was repealed by the eighth section of the Act of Congress of March 2, 1821, except as to debts contracted with the bank previous to the passing of that act.

    Notes, given after the date of that act, and discounted by the bank for the purpose of applying the proceeds of such discounting to the payment of debts due before the passing of that act, are not within the exception in the repealing act. By taking and discounting the new notes the bank relinquished the right to the summary remedy annexed to the old debt. *Ibid.*
12. The clerk had no authority to issue a second or *alias* writ of *fieri facias* upon the same order upon which the first was issued. There should have been a new order founded upon a new affidavit, &c. *Ibid.*
13. The clause of the fourteenth section of the charter of the Bank of Columbia, which provides that "such executions shall not be liable to be stayed or delayed by any supersedeas, writ of error, appeal, or injunction, from

BANK OF COLUMBIA, (*continued.*)
the chancellor," was only applicable to such writs of supersedeas, error, and injunction, as the debtor himself might attempt to interpose, or as might be interposed by some person who had voluntarily subjected himself to the summary remedy by becoming party to a note expressly made negotiable at the Bank of Columbia. That clause could only regulate courts established under the authority of Maryland. *Ibid.*

BANK OF POTOMAC.
The Bank of Potomac has a lien on its stock in the hands of a stockholder whose notes are lying over unpaid. *Burford* v. *Crandell*, ii. 86.

BANK OF THE UNITED STATES.
1. *Quære*, whether a check drawn upon "the Office of Discount and Deposit, Washington," is evidence to support an averment of a check drawn on "the Bank of the United States?" *United States* v. *Wilson*, i. 104.
2. The expiration of the charter of the Bank of the United States on the 4th of March, 1811, abated all suits then pending in the name of the president, directors, and company of that bank. *Bank of the United States* v. *McLaughlin*, ii. 20.

BANK OF WASHINGTON.
1. Upon the death of a stockholder in the Bank of Washington, insolvent and indebted to the United States, the bank has no right to set off the dividends accruing upon his stock after his death, against notes upon which he was indorser. *Brent* v. *Bank of Washington*, ii. 517.
2. The Bank of Washington has no specific lien upon the dividends of its stockholder in consequence of its right to prevent the transfer of his stock until his debt to the bank should be paid. *Ibid.*
3. After the death of a customer of the bank, a notice, left with the person who was authorized by him, in his lifetime, to receive notices for him, does not bind his executors. *Ibid.*
4. The Bank of Washington has a right, under the eleventh section of its charter, to prevent a transfer, upon its books, of the stock of any debtor of the bank. *Pierson* v. *Bank of Washington*, iii. 363; *Bank of Washington* v. *Pierson*, ii. 685.

BANK NOTE.
1. *Quære*, whether stealing a bank-note, is larceny within the Act of Congress of 1790, c. 30, § 16? *United States* v. *Murray*, i. 141.
2. Bank-notes are not goods and chattels. *United States* v. *Morgan*, i. 278.
3. An indictment upon the Maryland Act of 1793, c. 35, must state of what bank the stolen notes were, and whether the bank was incorporated by the United States, or by a particular State. It is not sufficient to aver in the terms of the act. *United States* v. *Porte*, i. 369.
4. In a criminal case, bank-notes are not money. *United States* v. *Wells*, ii. 43.
5. Bank-notes are not goods and chattels, nor money; and the stealing of them is no offence at common law. *United States* v. *Henry Bowen*, ii. 133; *United States* v. *Carnot*, ii. 469.
6. The Court will not order stolen bank-notes to be restored to the person from whom they were stolen, they having been received *bonâ fide* by innocent persons, in the way of business. *United States* v. *Betty Read*, ii. 159.
7. If the owner of a bank-note lose one half of it, he may recover the amount of the whole note in an action against the bank which issued it, the plaintiff having offered security to indemnify the bank against the claim of any other person upon the lost half. *Armat* v. *Union Bank*, ii. 180.

BANKRUPT.
1. See BAIL, 12. *Bennett* v. *Alexander*, i. 90.

BANKRUPT, (*continued.*)

2. The plaintiff, suing as assignee of a bankrupt, must produce the commission and proceedings and deed of assignment. *McIver* v. *Moore*, i. 90.
3. See BAIL, 15. *Lingan* v. *Bayley*, i. 112.
4. In a chancery attachment against a British bankrupt, the Court will permit the assignees to appear and release the attached effects and defend the suit, on their producing a notarial copy of the commissioner's proceedings. *Wilson* v. *Stewart*, i. 128.
5. A bankrupt surrendered by his bail during the time allowed for his examination, will not be committed in execution. *Foxall* v. *Levi*, i. 139.
6. See BAIL, 16. *Baker* v. *Vasse*, i. 194.
7. Bankruptcy of the plaintiff cannot be proved by parol. *Moore* v. *Voss*, i. 179.
8. Evidence cannot be given to show that the commissioners of bankrupt erred in their judgment. *Sutton* v. *Mandeville*, i. 187.
9. The writ is not abated by substituting the assignee as plaintiff in place of the bankrupt. *Wise* v. *Decker*, i. 190.
10. A copy of the proceedings of the commissioners of bankrupt in England, is not evidence under the Act of Virginia, because not recorded in England so as to make the proceeding evidence there. *Leay* v. *Wilson*, i. 191.
11. A note given before the bankruptcy of the maker, payable after and taken up by the payee (the indorser) before final certificate, may be proved under the commission. *Baker* v. *Vasse*, i. 194.
12. A draft drawn by a bankrupt, not payable out of any particular fund, is not such an assignment of the money in the hands of the drawee as will give the holder a right to the money before the acceptance of the draft; it is, at most, only a security, and does not entitle the holder to be relieved from more than a ratable part of his claim. *Dickey* v. *Harmon et al.* i. 201.
13. The assignees of a British bankrupt cannot maintain a suit in their own names, in Maryland, against a debtor of the bankrupt; and it seems, that a promise to pay the money to them, would be void for want of a consideration. *Perry* v. *Barry*, i. 204.
14. If there be judgment for one of several defendants upon a demurrer to his separate plea of bankruptcy, he may be examined as a witness for the other defendants, upon executing a release of his interest in his estate. *Hurliki's Administrator* v. *Bacon*, i. 340.
15. A defendant, under the bankrupt law, cannot set off a debt due to him by a partnership against a claim of the assignee of one of the firm who became bankrupt. *Oxley* v. *Tucker*, i. 419.
16. A bond due by the bankrupt to the defendant cannot be set off against the defendant's note to a third person assigned to the assignee of the bankrupt's effects after commission issued. *McIver* v. *Wilson*, i. 423.
17. A surety, who had paid money for the bankrupt in discharge of a duty-bond, has not the right of the United States to proceed against the person of the bankrupt, but only against his effects. *Kerr* v. *Hamilton*, i. 546.
18. Under the bankrupt law, an attaching creditor was entitled to only a ratable part of his claim with the other creditors; and that part was to be ascertained by the assignees under the direction of the commissioners. *Harmon & Davis's Assignees* v. *Jamesson*, i. 288.
19. The assignees, under the bankrupt law of 1800, cannot deny the authority of the commissioners under whom they received the property of the bankrupt. *Gulick* v. *McIver*, iii. 650.
20. A person claiming title, under a deed from commissioners of bankrupt, under the Bankrupt Law of 1800, must show their authority, and that their proceedings were regular, &c., as they exercised only a special

BANKRUPT, (*continued.*)
limited power; but if the records are destroyed, the next best evidence will be received. *Thomas* v. *Cruttenden*, iv. 71.

BARGAIN AND SALE.
A deed of bargain and sale, by a person not in possession, conveys no title. *Frazer* v. *Hunter et al.* v. 470.

BARON AND FEME.
1. Bail cannot be required of a *feme covert* in a civil action. *Henry* v. *Cornelius & Wife*, i. 37.
2. The wife of him whose goods were stolen, is not a competent witness for the prosecution, unless the husband has released to the United States his share of the fine. *United States* v. *Shorter*, i. 315.
3. A *feme covert* may be naturalized. *Mariana Pic's case*, i. 372.
4. A marriage settlement of the intended wife's goods, although not recorded, protects the goods from the creditors of the husband. *Pierce* v. *Turner*, i. 462.
5. The husband is not liable for goods sold and delivered to his wife upon her credit, after a separate maintenance allowed by him; but from the defendant's express promise to pay, the jury may infer that the goods were delivered to his wife by his order, unless such inference be rebutted by proof that the original credit was given to her. *Shreve* v. *Dulany*, i. 499.
6. A selling by the wife, with the consent of the husband, is a selling by the husband. *United States* v. *Birch*, i. 571.
7. The wife of one of the defendants, is not a competent witness for the plaintiff, although her husband has been discharged under the insolvent act. *Bank of Alexandria* v. *Mandeville*, i. 575.
8. It is no fraud in a husband towards his creditors, to purchase a real estate with the money which belonged to the wife before the marriage, and to take the deed directly to the wife, pursuant to a verbal agreement to that effect made with her before the marriage. *Mechanics Bank* v. *Taylor & Wife*, ii. 507.
9. In trover by husband and wife for a conversion of the wife's goods before marriage, the declaration must conclude *ad damna ipsorum*. *Semmes & Wife* v. *Sherburne*, ii. 534.
10. Where husband and wife are co-defendants, service upon the husband alone is good service of the *subpœna*. *Robinson* v. *Cathcart*, ii. 590.
11. Trover will not lie against husband and wife for a conversion to her use only. *Hollenback* v. *Miller*, iii. 176.
12. An action cannot be maintained against the husband for the debt of the wife after her death, upon an express promise made by the husband in the lifetime of the wife, upon no other consideration than his liability as husband for the debt of the wife, and the property which he acquired in right of the marriage. *Callan* v. *Kennedy*, iii. 630.
13. A due-bill, made to the wife during the coverture, and for a consideration accruing during the coverture, is not admissible evidence to support a declaration which avers that the due-bill was made *dum sola*. *Smith and Wife* v. *Clark*, iv. 293.
14. See ASSAULT AND BATTERY, 9. *United States* v. *Fitton*, iv. 658.
15. The goods of the wife are the goods of the husband, and must be so called in an indictment for larceny. The wife kept a millinery shop in Washington, and the husband a tinman's shop in Alexandria; but they lived together, and the shop was not for her separate use. *United States* v. *Patrick Murphy*, iv. 681.
16. Under the Act of Maryland, 1798, c. 101, ch. 5, § 8, the husband is the administrator of his deceased wife's estate, and may sue for her *choses in*

BARON AND FEME, (*continued.*)

action not reduced into his possession in her lifetime; although her property had been conveyed in her lifetime to a trustee for the sole and separate use and benefit of her, her executors, administrators, and assigns; she not having assigned the trust-fund in her lifetime, nor disposed of it by will or deed executed according to the terms of the trust. *Marshall* v. *Dorsett*, iv. 696.

17. If the goods stolen be charged as the goods of A. B. and if, upon the evidence, it appear that A. B. was a *feme covert*, and the goods were the property of her husband; yet if the husband be absent and not contributing to her support, she keeping house by herself, the Court will not instruct the jury to find the prisoners not guilty. *United States* v. *Joseph Parsons and two others*, iv. 726.
18. If personal property be conveyed to a trustee "for the sole and separate use of a *feme covert*, her executors, administrators, and assigns, free and clear from any control or demand of the husband or his creditors," with leave to lend the money with the approbation of the wife, for her "like sole and separate use;" the money thus lent and unpaid at the death of the wife, does not become the property of the husband; nor is he entitled thereto in equity, although standing in the place of administrator under the Maryland law of 1798, c. 101, ch. 5, § 8, he might recover it at law. *Dorsett* v. *Marshall*, v. 96.
19. When property is conveyed in trust for the sole and separate use of the wife during the term of her life, and after the expiration of such term, for the use of such person or persons, and for such purposes as she by her last will and testament should appoint and direct, and in default of such appointment, to the use of her next of kin and personal representatives, a court of equity cannot authorize the trustees to convey the property to the husband, upon a bill filed by him and his wife against the trustees for that purpose. *Markoe and wife* v. *Maxcy et al.* v. 306.
20. An agreement by a *feme covert* to relinquish her dower in certain lands, and to mortgage to her husband's creditors other lands held in trust to her separate use, is a sufficient consideration to prevent a post-nuptial deed of trust to her separate use from being a voluntary conveyance; and the subsequent actual release of dower, &c., made it an adequate consideration. *Bank of the United States* v. *Lee et al.* v. 319.
21. The joint possession of husband and wife, of property conveyed to her separate use, is no evidence of fraud. *Ibid.*
22. A deed of conveyance of slaves, in Virginia, for the separate use of the wife, loses nothing of its validity by the removal of the parties to Washington, D. C., and it is not necessary that it should be there recorded. *Ibid.*
23. A power, reserved in a deed of trust, to dispose of any part of the property with the consent of the trustee, and upon substituting an equivalent, is not evidence of fraud. *Ibid.*
24. The subsequent conduct of the husband in disposing of some of the slaves, without the consent of the trustees, and without substituting an equivalent, is not evidence that the deed was fraudulently made. *Ibid.*
25. A deed of bargain and sale of her slaves by a *feme sole*, to a trustee, to her separate use, without any control of her husband, notwithstanding her future coverture, is a bar to the marital right of the future husband, unless made without his privity and consent; but if made pending the treaty of marriage, without valuable consideration, and without the privity or knowledge of the husband, it is void as to him. *Prather* v. *Burgess*, v. 376.
26. A husband who has conveyed all his estate to a trustee, for the sole and separate use of his wife, may join with her in an action of trespass *quare*

BARON AND FEME, (*continued.*)

clausum fregit, and in law would be entitled to the damages recovered; although in equity he might be considered as receiving them in trust for the separate use of the wife. *Frazer et al.* v. *Hunter et al.* v. 470.

27. A *feme covert* having a separate estate in the hands of her trustee, may contract debts and bind her separate estate for the payment; and the Court will appoint a receiver to collect the rents and profits. *Simms* v. *Scott*, v. 644.

BARRATRY.

Upon an indictment for barratry, no evidence of specific acts can be given without notice.

Notice, given after the commencement of the trial, is too late. *United States* v. *Porter*, ii. 60.

BASTARD.

1. This Court, in Alexandria, has jurisdiction to require the father of a bastard child to give security for its support. *Ross* v. *Kingston*, i. 140.
2. The mother of a bastard is a competent witness for the United States, on an indictment of the supposed father, under the Maryland Act of 1781, c. 13, and may be cross-examined as to her connection with other persons. *United States* v. *Collins*, i. 592.
3. Evidence of the likeness of the child to its supposed father, is not admissible. *Ibid.*
4. The only judgment which the Court can give, under the statute of Maryland 1781, c. 13, is that the defendant give security to indemnify the county for any charge for the maintenance of the child. *Ibid.*
5. A recognizance, in a case of bastardy, cannot be taken by a justice of the peace in Virginia, unless upon application of the overseers of the poor. *United States* v. *Clements*, ii. 30; *United States* v. *Dick*, ii. 409.
6. In the county of Alexandria, a justice of the peace has no authority to take the recognizance required by the Virginia law of December 26, 1792, § 23, unless on application of an overseer of the poor of the county.

Quære, whether that section is in force in the county of Alexandria? *United States* v. *Hancock*, iii. 81.

BENCH-WARRANT.

The Court will issue a bench-warrant, against a person charged with treason upon *ex parte* affidavits, before any presentment or indictment. *United States* v. *Bollman & Swartwout*, i. 373.

BIGAMY.

1. On an indictment for bigamy, a person who has an action pending against the prisoner for goods furnished to the supposed first wife, is not a competent witness to prove the first marriage. *United States* v. *Maxwell*, i. 605.
2. Upon a trial in Alexandria, D. C., for bigamy, the bond given by the defendant to the clerk of the court at Richmond to obtain a marriage license, cannot be given in evidence on the part of the United States. *United States* v. *Lambert*, ii. 137.
3. The fact, that the person, who performed the ceremony of marriage, was a clergyman authorized to celebrate the rites of matrimony according to the laws of Virginia, may be proved by parol, as any other matter of fact *in pais;* and the record of the testimonial required by the Act of Virginia, December 22, 1792, c. 104, § 3, need not be produced, nor a copy thereof. *Ibid.*
4. A person convicted of bigamy in Alexandria, D. C., is entitled to the benefit of clergy; and may be burnt in the hand, and required to recognize for his good behavior. *Ibid.*

BIGAMY, (*continued.*)

5. Upon a trial for bigamy, in Alexandria, D. C., the prisoner is entitled to peremptory challenge. *Ibid.*
6. An indictment for bigamy must be tried in the county in which the last marriage was celebrated. *United States* v. *Jernegan*, iv. 1.
7. The statute of bigamy, 1 Jac. 1, c. 11, was expressly enacted and declared to be in full force to all intents and purposes, in Maryland, by the Act of 1706, c. 8; and, by the bill of rights of that State and the Act of Congress of 27th of February, 1801, became the law of the county of Washington. *United States* v. *Jernegan*, iv. 118.
8. *Quære*, whether, in a prosecution for bigamy, evidence of a marriage *de facto* is evidence of a marriage *de jure*. *Ibid.*
9. On a conviction of bigamy, the Court may dispense with the burning in the hand. *Ibid.*

BILLIARDS.

A person who hires out his billiard-table and room for two days, is liable to the penalty of the Maryland Act of 1798, c. 113. *United States* v. *Duval*, ii. 42.

BILL OF EXCEPTIONS.

1. The Court will not sign a bill of exceptions which states that it contains all the evidence in the cause, unless, &c. *Lyles* v. *Mayor and Commonalty of Alexandria*, i. 361.
2. The Court will not sign a bill of exceptions to the terms in which a certain paper, which had been offered in evidence, is described in the instructions of the Court to the jury; the paper itself being referred to; but will sign a bill of exceptions to the refusal of the Court to sign the former bill of exceptions. *Smith* v. *Hoffman*, ii. 651.

BILL OF LADING.

The assignment and delivery of a bill of lading and invoice of goods *in transitu*, for a valuable consideration, conveys the legal title; and the goods cannot be attached as the property of the assignor. *Balderston* v. *Manro*, ii. 623.

BILL OF SALE.

A bill of sale of personal property is valid between the parties to transfer the legal title, although the possession and beneficial interest remain with the vendor. *Washington* v. *Wilson*, ii. 153.

BILLS AND NOTES.

1. To charge an indorser, in Virginia, it is necessary that the plaintiff should show that he instituted his suit against the maker in due time and prosecuted it diligently to an ineffectual execution. *Mandeville* v. *McKenzie*, i. 23.
2. In Virginia, the indorsee of a promissory note may recover at law against a remote indorser; and it is not necessary that he should have given the defendant notice of the non-payment by the maker, nor of his insolvency. *Dunlop* v. *Silver*, i. 27.
3. If the holder of a note receive an inland bill of exchange for the money due on the note, it is a discharge of the note unless the parties otherwise agree. *Ibid.*
4. In Virginia, debt lies by the indorsee of an inland bill against the acceptor. *Vowell* v. *Alexander*, i. 33.
5. In an action against the indorser of a foreign bill of exchange for non-payment, it is not necessary to produce a protest for non-acceptance. *Hodgson* v. *Turner*, i. 74.
6. Debt will lie against the maker of a promissory note. *Gardner* v. *Lindo*, i. 78.
7. An action for money had and received can be maintained, under the laws

BILLS AND NOTES, (*continued.*)
of Virginia, by an indorsee against a remote indorser of a negotiable promissory note. *Riddle* v. *Mandeville*, i. 95.
8. The indorser, at Alexandria, of a foreign bill of exchange to a merchant in New York, is only liable for damages according to the laws in Alexandria. *Lenox* v. *Wilson*, i. 170.
9. If the agent of the drawee of a bill, write an order on the back of it to another person, to pay it; this order is evidence of the drawee's acceptance of the original bill. *Harper* v. *West*, i. 192.
10. Where there are two joint indorsers, notice must be given to both. *Gantt* v. *Jones*, i. 210.
11. If one of the joint indorsers pay the note, he cannot recover a moiety from the other indorser unless he was liable to pay the note. *Ibid.*
12. Notice to an indorser is necessary unless he knew the maker to be insolvent at the time of indorsement. *Morris* v. *Gardner*, i. 213.
13. When the parties live within two miles of each other, nine days' delay is fatal. *Ibid.*
14. A subsequent promise made by the defendant, with full knowledge of his discharge, will bind him. *Ibid.*
15. The maker is a competent witness for the indorser. *Bank of Columbia* v. *French*, i. 221.
16. The indorser for the accommodation of the maker of a note is not entitled to strict notice unless he has sustained damage by the want of notice. *Ibid.*
17. An indorser for the accommodation of the maker cannot object the want of consideration. *Ibid.*
18. The holder of a bill before protest is not affected by a settlement between the drawer and the payee. *Cox* v. *Simms*, i. 238.
19. In an action upon protest for non-payment, it is not necessary to show a protest for non-acceptance nor to give notice of non-acceptance. *Ibid.*
20. Reasonableness of notice is to be decided by the jury. *Ibid.*
21. In an action by the payee of a bill having two subsequent indorsements in full, it is not necessary for the plaintiff to show a new assignment to himself. *Ibid.*
22. If the drawer has no funds in the hands of the drawee, he is not entitled to notice of non-payment. *Ibid.*
23. An order payable out of a particular fund, and not negotiable, is not payment of a preceding debt. *Governor of Virginia* v. *Turner*, i. 261.
24. It is necessary that the holder of a foreign bill, protested for non-acceptance, should give notice of the protest as soon as possible, under all the circumstances, according to the usual course of communication. *Lindenberger* v. *Wilson*, i. 340.
25. In time of war, duplicate notices of protest of a bill of exchange should be sent. *Phillips* v. *Janney*, i. 502.
26. If the holder of a bill of exchange be beyond seas at the time his cause of action accrues, and so continues until suit brought, the statute of limitations is no bar, although the indorser was always a resident of the United States. *Irving* v. *Sutton*, i. 567.
27. A Virginia indorser of a bill of exchange drawn in Barbadoes, is liable to fifteen per cent. damages under the law of Virginia. *Pomery* v. *Slacum*, i. 578.
28. Notice of protest of a foreign bill must be given before suit brought. *Ibid.*
29. If the drawer and payee of a check upon a bank reside in the town where the bank is, and the drawer be insolvent, the jury cannot, in law, infer from those facts, that the plaintiff had used due diligence in demanding payment and giving notice to the defendant. *McKinder et al.* v. *Dunlop*, i. 584.

BILLS AND NOTES, (*continued.*)

30. If the defendant has received the proceeds of the plaintiff's note discounted, with the defendant's indorsement, the plaintiff cannot recover the amount unless he has paid and produces the note, or accounts for its non-production. *Gillis* v. *Van Ness*, i. 369.
31. Under the laws of Virginia, in an action against the indorser of a promissory note, the plaintiff, to excuse himself for not having first brought suit against the maker, must show him to be insolvent at the time of bringing the suit; and, in order to recover, must have given reasonable notice of non-payment by the maker, and the jury is to decide whether the notice was reasonable. *McIver* v. *Kennedy*, i. 424.
32. In an action, in Virginia, by the indorsee against the indorser of a promissory note, if the maker be insolvent, it is not necessary that the plaintiff should have first sued the maker, although at the time of bringing the suit, the maker had in his hands goods and chattels more than enough to pay the debt. *Vowell* v. *Lyles*, i. 428.
33. If the defendant indorse the note to give it credit, no other consideration is necessary to support the action against the indorser. *Ibid.*
34. A blank indorsement may be filled up at the bar, after the jury is sworn; and the indorsement, so filled up, is *prima facie* evidence of a good consideration. *Ibid.*
35. If a promissory note payable to A. or order, be indorsed in blank by B. and by A. —— B.'s name being written over A.'s, the plaintiff has not a right, at the trial, to fill up the blanks by an indorsement from A. to B. and from B. to the plaintiff; there being no evidence that such was the intention of the parties, except the note and the blank indorsements. *Quære?* *Cooke* v. *Weightman*, i. 439.
36. In Virginia, the insolvency of the maker of a promissory note excuses the holder for not suing him before suing the indorser. *Patten* v. *Violette*, i. 463.
37. An indorsement of a blank paper, with intent to give credit to the maker of a promissory note which should afterward be written thereon, is obligatory, although no other consideration passed from the indorsee to the indorser; and authorized the maker to make the note in the manner intended at the time of the indorsement. *Ibid.*
38. It is no bar to the plaintiff's recovery that the maker of the note had at the time it became payable, property enough to pay this debt, and that he and the plaintiff resided in the same town, and that the plaintiff brought no suit against the maker. The insolvency which will excuse the plaintiff for not bringing suit against the maker, must be such as in the opinion of the jury would render a suit fruitless. *Ibid.*
39. If the maker was solvent when the note became payable, and the defendant, during such solvency, requested the plaintiff to sue the maker, and he did not, the defendant is discharged from liability, under the equity of the statute of Virginia. *Ibid.*
40. A bill of exchange may be accepted by writing upon it the word "excepted." *Miller* v. *Butler*, i. 470.
41. The acceptor of a bill of exchange given for the amount of an award, cannot avail himself of a mistake of the arbitrators in making up their award. *Ibid.*
42. In an action by the indorsee against the maker of a promissory note, the plaintiff need not produce written evidence of the authority of the indorser's agent to indorse. *Miller* v. *Moore*, i. 471.
43. In an action against the indorser of a promissory note, a record of a judgment upon the same note, between other parties, cannot be given in evidence, unless the note itself be produced, and the defendant's indorsement proved. *Welch* v. *Lindo*, i. 497.

BILLS AND NOTES, (*continued.*)

44. If a person, who is not a party to a promissory note, indorses his name upon it in blank with intent to give it credit, the plaintiff may write over it an engagement to pay it in case of the insolvency of the maker; and such indorser may insist on the usual demand and notice. *Offutt* v. *Hall*, i. 504.
45. If Saturday be the last day of grace, a demand, on the following Monday, is too late. *Thornton* v. *Stoddard*, i. 534.
46. If the defendant indorsed as surety, he is entitled to strict demand and notice; if he is jointly interested, he is not. *Ibid.*
47. A count upon an indorsement of a promissory note, not payable to order, without averring a consideration for the indorsement, is bad, in Virginia. *Janney* v. *Geiger*, i. 547.
48. A plea that the maker of the note had, at the date of the writ, property to a greater amount than the plaintiff's claim, is no bar to an averment of insolvency. *Ibid.*
49. Notice of non-payment by the maker of a promissory note, not payable to order, is not necessary to charge the assignor, in Virginia. *Ish* v. *Mills*, i. 567.
50. An intent to give credit to a note is a good consideration for an indorsement. *Offutt* v. *Hall*, i. 572.
51. Insolvency of the maker of a note, in Virginia, dispenses with a suit against him; and also with demand and notice. *Ibid.*
52. In an action by the indorsee against the maker of a promissory note, the defendant may set off the payee's note to him, which he held before and at the time he had notice of the assignment of his own notes to the plaintiff, although not then payable, but becoming payable before his own note. *Stewart* v. *Anderson*, i. 586.
53. A request, by the indorser of a note, to the holder, to push the maker, is not evidence of a waiver of demand and notice; but is evidence from which the jury may infer due demand and notice. *Riggs* v. *St. Clair*, i. 606.
54. The insertion of the words "value received," after indorsement, does not avoid the note, unless done with the privity of the plaintiff. *Ibid.*
55. After an indorser is fixed by a proper demand and notice, the neglect of a trustee to sell property conveyed to him as security for the notes, until, by depreciation, the security became inadequate, will not exonerate the indorser. *Bank of Alexandria* v. *Wilson*, ii. 5.
56. A protest which does not state that the notary-public informed the indorser that payment had been demanded and refused by the maker of the note, is not evidence of sufficient notice to charge the indorser. *Ibid.*
57. The day after the expiration of the three days of grace is soon enough to make the demand and give notice; and it may be made by the notary's clerk, who has possession of the note with the plaintiff's consent. *Ibid.*
58. The indorsement of the note is evidence of money had and received by the defendant for the plaintiff's use, although the note was indorsed by the defendant for the accommodation of the maker. *Ibid.*
59. The plaintiff's counsel may fill the blank indorsement at the trial, although the defendant indorsed the note for the accommodation of the maker. *Bank of the United States* v. *Roberts*, ii. 15.
60. The indorsee of a promissory note, not payable to order, but expressed to be "negotiable at the bank of discount and deposit," may maintain an action upon it, in his own name, against the maker. *Muir* v. *Jenkins*, ii. 18.
61. The payee of a promissory note who has passed it away, and been obliged, by his indorsement, to take it up, may recover the money from the maker, upon a special count. *Reintzel* v. *Morgan*, ii. 20.

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62. If the indorser, knowing that the plaintiff had neglected to give him notice, and had received part of the money from the maker, promise to pay the balance if the maker should not, it is a waiver of notice, and he is liable. *Perry* v. *Rhodes*, ii. 37.
63. Upon a note due 23d–26th July, demand and notice after the 28th are too late; but demand and notice on the 27th are not. *Lenox et al.* v. *Wright*, ii. 45.
64. A promissory note made in Georgetown, D. C., in 1810, payable to C. L. N. or order, at sixty days, "negotiable in the Bank of Alexandria," is governed by the laws in force in Alexandria; and the holder, in an action against the maker, must allow all just discounts against the payee, before notice of the assignment given to the maker. *Gilman* v. *King*, ii. 48.
65. An indorser is a competent witness for the maker of the note, to prove that the indorsement was without consideration, and to give credit to the note; but the payee is not a competent witness for the plaintiff. *Ibid.*
66. The Bank of Alexandria, in 1807, was bound to demand payment of the maker, and give notice to the indorser, of the non-payment, before they could maintain an action against him. *Bank of Alexandria* v. *Young*, ii. 52.
67. If the indorser of a note write on the face of it, "credit the drawer," the note and indorsement are not evidence of money had and received by the indorser to the use of the indorsee who had discounted the note, and applied the proceeds to the credit of the maker. *Ibid.*
68. Demand and notice to the indorser are not necessary in Virginia, if the maker was so insolvent that the notice could be of no use to the defendant. *Riddle* v. *Mott*, ii. 73.
69. Notice of the non-payment of a note signed by "John," is not notice of the non-payment of a note signed by "James," unless the party had good reason to believe that the note of James was intended. *Underwood* v. *Huddlestone*, ii. 93.
70. In an action by the indorsee against the indorser of a promissory note, the maker is a competent witness to prove the contract to be usurious, unless he is interested. *Knowles* v. *Parrott*, ii. 93.
71. A note of an unincorporated bank, "payable out of the joint funds, and no other," is a promissory note, within the meaning of the Maryland statute of 1799, c. 75, § 1. *United States* v. *Bennett Smith*, ii. 111.
72. Upon a note payable on demand, the cause of action does not accrue until demand made, and if the defendant remove before demand, the act of limitations is not a bar. *Lee* v. *Cassin*, ii. 112.
73. The holder of a promissory note in Alexandria, D. C., has no equity against a remote indorser, unless he has used due diligence to recover the money from the parties who were liable to him at law upon the note. *Dean* v. *Marsteller*, ii. 121.
74. The person who knowingly takes a dishonored check, payable to bearer, takes it subject to the drawer's equity against the person from whom he received it. If the holder, at the time of taking the check, knew that the person who gave it to him, had no right to give it, he cannot recover against the drawer. *Rounsavel* v. *Scholfield*, ii. 139.
75. After a note is taken up by the indorser its negotiability ceases; and he cannot, by transferring the note, assign his right of action at law so as to enable the assignee to sue in his own name. *Swann* v. *Scholfield*, ii. 140.
76. Demand of payment of a promissory note on the day after the last day of grace, is too late. *Beeding* v. *Pic*, ii. 152.
77. The want of notice of non-acceptance is not excused by an understanding

BILLS AND NOTES, (*continued.*)
between the plaintiff and James, that the bill should not be sent on for acceptance. *Nicholson* v. *James and Robert Patton*, ii. 164.

78. If the declaration aver a protest for non-acceptance as well as for non-payment of a foreign bill of exchange, and the action be brought upon the protest of non-payment, it is not necessary that the plaintiff should prove the averment of protest for non-acceptance. *Ibid.*

79. In order to charge Robert on a bill drawn by James, in his own name, it is necessary to prove that James and Robert carried on business in partnership under the firm of James. *Prima facie* it is the sole bill of James. *Ibid.*

80. The right of the United States to summary judgment under the Act of Congress of March 3, 1797, c. 74, § 3, does not extend to suits brought by the United States as indorsers of promissory notes. *United States* v. *Blacklock*, ii. 166.

81. Notice to the indorser on the third day of grace, although after bank hours, is too soon. *Auld* v. *Mandeville*, ii. 167.

82. An indorser who has been discharged by the laches of the plaintiff, is not bound by a promise to pay, unless he knew, at the time of his promise, the fact of laches. *Good* v. *Sprigg*, ii. 172.

83. Demand of payment of a note must be made on the last day of grace. *Auld* v. *Peyton*, ii. 182.

84. Demand of payment of a note on the third day of grace after bank hours, and notice to the indorser and protest on the same day, are not too soon, if the note is in bank for collection, and the maker has been notified thereof; such being the usage of the banks. *Munroe* v. *Mandeville*, ii. 187.

85. The making of a promissory note can only be proved by the subscribing witness, if there be one. Evidence of the confession of the maker that he owns part of it, is not sufficient on the money counts. *Turner* v. *Green*, ii. 202.

86. A note given for the assignment of the time of an apprentice, being for an illegal consideration, is void. *Walker* v. *Johnson*, ii. 203.

87. In an action by the indorsee against the acceptor of an inland bill, the indorser is a competent witness, for the defendant, to prove usury in the plaintiff's discounting of the bill. *Gaither* v. *Lee*, ii. 205.

88. A note given for the purchase of tickets in an unlawful lottery, is void. *Thompson* v. *Milligan*, ii. 207.

89. If a note be made payable at the house of R. Y., the first indorser, and the notary did not inquire at that house for the maker, or ask whether he had left funds there to pay it, but demanded payment of R. Y. at his house, such demand is not sufficient to enable the plaintiff to recover against the indorsers. *Mechanics Bank* v. *Lynn*, ii. 217.

90. If a notary-public, after demanding payment of the maker of a promissory note, go to the workshop of the indorser, and there demand payment, but of whom he does not remember, and thinks he did not see the indorser, this is not sufficient evidence of notice to the indorser of non-payment by the maker. *Mechanics Bank* v. *Taylor*, ii. 217.

91. An alteration of the date of a note, whereby the time for payment is prolonged, does not make the note void as to the maker. *Union Bank* v. *Cook & Clare*, ii. 218.

92. If a note fall due on Saturday, and payment be demanded of the maker on that day, notice to the indorser on Monday is not too late. *Crawford* v. *Milligan*, ii. 226.

93. If a man lends to his friend his check upon a bank in which he has no funds, upon the assurance of his friend that he will provide funds there to meet it; and the plaintiff at the time of receiving it, knew that the

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drawer of the check at the time of drawing it, had a reasonable expectation that funds would be so placed in the bank, the drawer is entitled to regular notice of the non-payment by the bank. *Mackall* v. *Goszler*, ii. 240.
94. It is no defence, at law, to an action by the assignee against the maker of a promissory note, that it was given for the purchase of land which the payee had failed to convey to the maker according to his covenant, although the note was assigned to the plaintiff after it was dishonored. *Holy & Suckley* v. *Rhodes*, ii. 245.
95. In an action against the last indorser of a promissory note, it is not necessary to prove the prior indorsements. *Whittemore* v. *Herbert*, ii. 245.
96. If a note be discounted by the plaintiff for the joint benefit of the maker and indorsers; or if they are jointly interested in the object for which the money was raised, it is not necessary, in order to charge an indorser, to demand payment of the maker, or to give notice to the defendant of the non-payment, although the parties should be interested in unequal proportions, and the defendant should have indorsed as surety for the other parties to the extent that the whole note exceeded his interest therein. *Bank of Washington* v. *Way*, ii. 249.
97. If a note be made, payable in sixty days, by the agent of the indorsers for his and their joint accommodation, to be discounted at a bank who refuse to discount it, unless made payable in forty-five days, the maker may alter it accordingly, provided it be done at the request, or with the consent, or subsequent approbation of the defendant and the other indorsers, and they receive the benefit of the discount; but the burden of proof of such consent, or subsequent approbation, lies on the plaintiff, and is not to be inferred from the mere circumstance of the defendant's afterward participating in the benefit of the discount. *Ibid.*
98. The maker of a note cannot be compelled to testify for the plaintiff in an action against the indorser; but the maker's letters to the plaintiff, inclosing the note for discount, may be read in evidence. *Ibid.*
99. To support an action against the maker of a note payable at a particular place, it is not necessary to prove a demand of payment at that place. *Brown* v. *Piatt*, ii. 253; *Smith* v. *Johnson*, ii. 645.
100. It is a sufficient excuse for not giving notice to the indorser of the non-payment of a promissory note by the maker, that the holder called at the usual place of business of the indorser, in business hours, and found it shut, and no person there to receive notice. *Bowie & Kurtz* v. *Blacklock*, ii. 265.
101. According to the usage of the banks in the District of Columbia, it is not necessary to demand payment of a note, discounted at any of the said banks, until the day after the last day of grace. *Brent* v. *Coyle*, ii. 287.
102. If the maker of a note die before it becomes payable, a demand of payment, made upon his widow at the last place of his abode, is *primâ facie* a sufficient demand to charge the indorser; there being no evidence that there was an executor, or administrator; but if there be actually an executor or administrator, the demand must be made upon him; the burden of proof, however, that there was an executor or administrator, is on the defendant. *Bank of Washington* v. *Reynolds*, ii. 289.
103. In a declaration upon a bill of exchange payable to "Lapeyre, Farrowith & Company," all the persons composing the firm must be named, with an averment that they were joint partners, or joint traders, under the name and firm of Lapeyre, Farrowith & Company; otherwise the bill of exchange cannot be received in evidence. *Lapeyre, Farrowith & Co.* v. *Gales*, ii. 291.
104. If payment of a promissory note be demanded of the maker on the third day

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of grace after banking-hours, and notice of non-payment be given to the indorser on the next day, the demand is not too soon, nor the notice too late. *Bank of Metropolis* v. *Walker*, ii. 294; *Read* v. *Carbery*, ii. 417.

105. The payee, indorser of a lost inland bill of exchange, is not liable to the indorsee, unless the latter has offered indemnity to the drawer and indorser against the lost bill, and demanded a new bill from the drawer. *Riggs* v. *Graeff*, ii. 298.

106. Taking sixty-four days' discount upon discounting a note payable at sixty days, is not usury. *Union Bank* v. *Gozler*, ii. 349; *Bank of the United States* v. *Crabb*, ii. 299.

107. If a promissory note, payable at a certain day, be indorsed and passed away after its day of payment, it is then a note payable on demand; and demand and notice are necessary to charge the indorser, although he knew the maker to be insolvent at the time he indorsed it. *Stewart* v. *French*, ii. 300.

108. If Saturday be the last day of grace of a promissory note, and payment thereof be demanded on that day, of the maker in Georgetown, D. C., in time to give notice by the mail of the same evening to the indorser living in the city of Washington; notice put into the Georgetown post-office for the evening mail of the following Monday, is too late. *King* v. *Foyles*, ii. 303.

109. If the maker of a promissory note dated at the city of Washington, reside two miles out of the city, but within the county of Washington; and, being a clerk in one of the executive departments of the Government of the United States, and usually employed from ten to three o'clock in a room in the public executive buildings, with other clerks, comes, for that purpose, into the city in the morning, and returns to his house in the country in the evening, his absence from the room in the executive buildings, at the time the notary called to demand payment of the note, although within the usual hours of public business, was no excuse for not making a personal demand, or a demand at his dwelling-house. A demand of the bar-keeper of a tavern to which the livery-stable was attached, in which he occasionally left his horse while at the office, is not a sufficient demand. *Goldsborough* v. *Jones*, ii. 305.

110. A verbal notice to the indorser on the 18th, (being the day after the last day of grace,) that payment had been demanded of the maker on the 17th, and that the note would be protested if not paid on that day, (the 18th,) is not a sufficient notice to charge the indorser. *Bank of the United States* v. *Barry*, ii. 307.

111. When the indorser of a promissory note, has a public office in town in which he generally attends every day, and in his absence has a servant there to receive messages, &c., a notice put into the post-office of that town, directed to the indorser, is not sufficient notice to charge him without proof that he actually received it in due time; although the indorser's family reside five miles out of town, and the town post-office is the nearest post-office, and the one to which letters to him are generally directed. *Vowell* v. *Patton*, ii. 312.

112. Demand of payment, on the 5th of July, of a note due 1–4th July, is too late to charge the indorser; and the insolvency of the maker will not excuse the delay. *Neale* v. *Peyton*, ii. 313.

113. If an inland bill of exchange be signed thus: "Witness my hand and seal. W. D. (seal.)" — these words may be rejected as surplusage; and the declaration may be in the usual form as upon the custom of merchants. *Irwin* v. *Brown*, ii. 314.

114. If the last day of grace be Sunday, the demand must be made on Saturday, and the notice may be given on Monday. *Ibid.*

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115. If a promissory note be indorsed in blank after it has been dishonored, with a parol agreement between the indorser and the indorsee, that the indorser should not be liable, except in the case of the insolvency of the maker, it is competent for the defendant to prove such agreement by parol evidence. *Taylor* v. *Scholfield*, ii. 315.

116. In an action against the indorser of a note, which, in the body of it, is made payable at a particular bank, the declaration must aver a demand of payment at that bank. *Bank of the United States* v. *Smith*, ii. 319.

117. According to the usage and practice of the banks and notaries public in the county of Washington, D. C., demand of payment of a promissory note, and notice to the indorser, on the day after the last day of grace, are not too late to charge indorsers, resident in that county, having a knowledge of such usage and practice at the time of indorsing. *Smith et al.* v. *Glover*, ii. 334.

118. If an indorser, after suit brought against him, tell a stranger he is ready and willing to pay the debt, if he knew the amount of the costs, and to whom to pay it; this will not dispense with proof of demand and notice, or of the defendant's knowledge that he was discharged by the want of due demand and notice; nor with proof of the defendant's handwriting on the note, although the note was filed in the clerk's office before the supposed acknowledgment; nor will it be sufficient evidence to sustain any of the money counts. *Gassaway* v. *Jones*, ii. 334.

119. According to the laws of Pennsylvania, the equity follows a promissory note into the hands of an indorsee, unless dated at Philadelphia, and made payable "without defalcation." Those words, however, do not prevent the maker from showing fraud in the payee in obtaining the note. *Commercial and Farmers' Bank* v. *Patterson*, ii. 346.

120. In an action by the indorsee against the maker of a promissory note, the declarations of the payee before he parted with the note, are competent evidence for the defendant; but not those made after he passed it away. *Ibid.*

121. The addition, by the plaintiffs, or the payees, of the word and letters, "Washington, D. C.," to the signature of the maker, without his consent, and with intent to use that word and those letters as a part of the date of the note, (which was really made at Perryopolis in Pennsylvania,) with intent to make it negotiable according to the laws then in force in the District of Columbia, is a material alteration of the note, and makes it void. *Ibid.*

122. A bond to convey land is a good consideration of a promissory note given for the purchase-money, although the payee, who had given the bond, had not the legal title to the land, and could not convey when the note became payable. The indorsee of the note who has the legal title to the land, and power to convey it, may maintain an action against the maker without tendering a title. *Lane* v. *Dyer*, ii. 349.

123. If there are several actions against the maker and indorser of a promissory note, and judgment be rendered for the debt and costs against the maker who pays the same, the indorser will not be permitted to give evidence of such payment, until the costs be paid in the action against the indorser. *Ott* v. *Jones*, ii. 351.

124. Notice to the indorser, put into the post-office at Washington, D. C., for the defendant in Alexandria, on the day after the last day of grace, after the closing of the mail of that day, is too late. *Bank of the United States* v. *Swann*, ii. 368.

125. If the notary, not finding the indorser at home, leave a written notice with some one of his family, it is sufficient. *Cuna* v. *Friend*, ii. 370.

126. If the payee of a promissory note payable to order, indorse it after it has

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been dishonored, he thereby becomes the drawer of a new bill upon the maker in favor of the indorsee, and is not liable to such indorsee, without demand and notice; but he cannot set up, against a remote indorsee, an agreement with his immediate indorsee not appearing upon the note itself. *Cox* v. *Jones*, ii. 370.

127. A partial failure of consideration does not make the note void at law, unless accompanied by fraud. *Boone* v. *Queen*, ii. 371; *Varnum* v. *Mauro*, ii. 425.

128. If a note vary substantially from that described in the declaration, it cannot be given in evidence upon a writ of inquiry. *Farmers Bank* v. *Lloyd*, ii. 411.

129. See ASSIGNMENT, 8. *Gelston* v. *Adams*, ii. 440.

130. A public officer who buys a bill of exchange for public use and agrees to pay for it when it should be duly honored, is not personally responsible. *Stone* v. *Mason*, ii. 431.

131. Demand must be made of both makers of a joint and several note, although one of them reside out of the jurisdiction of this Court. *Tayloe* v. *Davidson*, ii. 434.

132. It is not necessary that payment of a promissory note should be demanded by a notary-public; the demand may be made by any other agent of the holder. *Ibid.*

133. If, at the time of the defendant's indorsement, it was understood by him and the plaintiffs that the indorsement was not to give credit to the note, but only to comply with the forms of the plaintiff's business as auctioneers, he cannot recover upon the note. *Corcoran* v. *Hodges*, ii. 452.

134. The acceptor of an inland bill of exchange, after being released by the defendant from liability for the costs of the suit, is a competent witness for the defendant to prove that the bill was drawn by the defendant, for the accommodation of the plaintiff and without consideration. *Knowles* v. *Stewart*, ii. 457.

135. A declaration upon a note payable to J. S., averring that he indorsed it as the agent of the defendant, should also aver that it was made payable to him as agent. *Wilson* v. *Porter*, ii. 458.

136. If a note be payable at a bank, it is a sufficient demand of payment of the maker, if the holder, on the last day of grace, demand payment at the bank; and the note is dishonored if the maker has no funds there to pay it. *Bank of the United States* v. *Oneale*, ii. 466.

137. When a place of payment is inserted in the body of the note, it is not necessary, in an action by the payee against the maker, to prove a demand of payment at the place named in the note. *Beverly* v. *Beverly*, ii. 470.

138. A party to a note discounted at a bank, is not bound by the special and particular usage of such bank, unless upon his agreement, express or implied. *Bank of Alexandria* v. *Deneale*, ii. 488.

139. If the indorser of a note dated at Georgetown, D. C., and held by a bank in that town, reside in the country, two or three miles from the bank, but has a house, or place of business within half a mile of the bank, where it was generally known, and especially known to the runner of the bank, that he kept his account-books, and received his ordinary bank notices, newspapers, and foreign letters, &c.; a notice left for him at the post-office in Georgetown, and directed to him at Georgetown, although that was his nearest post-office, and the one from which he usually received his letters which came by the mail, is not a sufficient notice to charge him as indorser, unless conformable to a well established usage of the bank, known to the defendant at the time of his indorsement. *Bank of Columbia* v. *Lawrence*, ii. 510.

140. See BANK OF WASHINGTON, 1. *Brent* v. *Bank of Washington*, ii. 517.

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141. If Sunday be the last day of grace on a promissory note, demand on Saturday is not too soon, and notice on Monday not too late. *McElroy* v. *English*, ii. 528.

142. If a note be payable at a certain bank, and payment be there demanded, it is not necessary to make a personal demand upon the maker in order to charge the indorser. *Bank of the Metropolis* v. *Brent*, ii. 530.

143. In an action, against the indorser of a promissory note made in the name of a firm, it is not material that the partnership of the makers had been dissolved before the making of the note; it being the renewal of a note given during the existence of the partnership. *Greatrake* v. *Brown*, ii. 541.

144. Demand of payment on one of the firm is sufficient to charge the indorser. *Ibid.*

145. A written notice left at the dwelling-house of the defendant is sufficient. *Ibid.*

146. If the maker of a note is not found at his office, or at his dwelling-house, on the last day of grace, so that payment of the note cannot be demanded, the note is dishonored. *Ibid.*

147. In an action by the payee against the maker of a promissory note, the plaintiff has a right, at the trial, before offering the note in evidence, to strike out the names of the indorsers. *Oneale* v. *Beall*, ii. 569.

148. If the indorser of a note payable 8th – 11th October, die intestate on the 9th, notice of non-payment left with his son, at the counting-house of the deceased, on the 11th, is sufficient. *Bank of Columbia* v. *King*, ii. 570.

149. If a note become payable on the 15th – 18th October, notice left on the 18th at the same place, is sufficient; no administration having been granted before that day. *Ibid.*

150. But if a note become payable on the 22d – 25th of October, a like notice, left at the same place, is not sufficient, the administrator having a separate place of business, in another part of the town. *Ibid.*

151. If a bank receive a note to be collected according to the known and established mode of transacting business at that bank, it is not liable for damages by omitting to demand payment on Saturday, when the third day of grace was Sunday; it being the established mode of transacting business, at that bank, in such a case, not to demand payment until Monday. *Patriotic Bank* v. *Farmers Bank*, ii. 560.

152. In an action against the indorser of a promissory note payable sixty days after date, *non assumpsit infra tres annos*, is a bad plea, upon general demurrer; it ought to be, *actio non accrevit*. *Bank of Columbia* v. *Ott*, ii. 575.

153. A note payable in sixty days, "with interest from date," will not support a declaration upon a note payable in sixty days without interest. *Coyle* v. *Gozzler*, ii. 625.

154. If an intermediate indorsement be averred in the declaration, it must be proved at the trial, although the suit be brought for the use of such intermediate indorser. *Ibid.*

155. A special custom of the banks and merchants in the county of Washington, D. C., to demand payment on the day after the last day of grace may be given in evidence without being averred in the declaration. *Ibid.*

156. Secondary evidence may be given of the contents of a promissory note lost with a blank indorsement. *Patriotic Bank* v. *Little*, ii. 627.

157. A promissory note given as collateral or counter security against a note borrowed, is not discharged or vacated by the borrower's discharging or taking up the borrowed note with funds furnished by the lender. *Smith* v. *Johnson*, ii. 645.

158. An authority to indorse notes need not be under seal. *Bank of Washington* v. *Pierson*, ii. 685.

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159. A power to sign any note for the renewal of notes, is a continuing power. *Ibid.*

160. If the maker of a note die before its maturity, and the indorser become his administrator, no demand or notice is necessary to charge the indorser. *Union Bank* v. *Magruder*, ii. 687.

161. If a man write his name, in blank, on the back of a note to which he is not a party either as payee or indorsee, before the note comes into the hands of the plaintiff, the presumption is that he did so for the purpose of making himself liable as the indorser of an ordinary negotiable note, and as if it had been made payable to himself, or order, and not otherwise; and he is entitled to all the rights of an indorser. *McComber* v. *Clarke*, iii. 6.

162. Notice left at the shop of the indorser's son is not sufficient to charge him, although the shop was in a room of the house in which the indorser resided, the entrance into the shop being separate from that into the dwelling-house; the indorser having no concern in his son's business; and being postmaster, and having a separate office in which he transacted his public and private business, and the son having a separate dwelling-house. *Bank of the United States* v. *Corcoran*, iii. 46.

163. An agreement, by an indorser, not to take advantage of the statute of limitations, and to authorize an attorney to agree to docket a suit upon the note, is not evidence from which the jury can infer that the indorser received due notice. *Ibid.*

164. After demand and notice to the indorser, the plaintiff may agree to give time to the maker of the note, without discharging the indorser. *Bank of the United States* v. *Abbott*, iii. 94.

165. The testimony of the notary that he demanded, of the maker, payment on the third day of grace, and gave notice to the indorser of the non-payment on the third, and also on the fourth day, is competent evidence of demand and notice, although the witness did not recollect the days of the month on which such demand was made and such notice given. *Ibid.*

166. It is not good ground for a new trial, that the bank had in their possession, documents of which they did not avail themselves, because they were not known to some of the officers of the bank at the time of trial. *Coote* v. *Bank of the United States*, iii. 95.

167. *Prima facie*, a bank has no right to charge up to the account of a firm the individual note of one of the partners; and the burden of proof lies on the bank to show the assent of the other partner. *Ibid.*

168. One partner has no right to draw the joint funds in his own name; nor can he lawfully appropriate them to his own use. He has only a right to use the joint name, and to act as and for the firm. *Ibid.*

169. A note payable in twelve months with interest, will not support a count upon a note payable in twelve months without interest. *Blue* v. *Russell*, iii. 102.

170. The plaintiff was permitted to strike out his own indorsement of the note after it had been offered in evidence to the jury, and objected to on account of such indorsement. *Ibid.*

171. If the creditor, after judgment against the maker and indorser of a promissory note, give time to the maker, he does not thereby discharge the indorser. *King* v. *Thompson*, iii. 146.

172. In an action against the maker of a promissory note, it is not necessary to show a demand of payment at the bank in which it is made payable. *Bank of the United States* v. *Bussard*, iii. 173.

173. See BANK, 6. *Riggs* v. *Swann et al.* iii. 183.

174. If the defendant, indorser of a promissory note, believing that he had a good defence at law, be induced to confess judgment by the assurance of the plaintiff's attorney at law that if he did so, the plaintiff would imme-

BILLS AND NOTES, (*continued.*)
diately proceed to levy by execution the amount thereof from the maker, who he assured the defendant had sufficient property in the county to satisfy the same; and if the plaintiff afterward refuse so to proceed against the maker, although requested so to do, and the maker become insolvent, a court of equity will decree a perpetual injunction. *Garey* v. *Union Bank*, iii. 233.

175. The plaintiff, in October, 1826, sold a horse to the defendant for his bill on the Postmaster-General, payable on the first of January following. The defendant gave the bill, but countermanded it the next day, and acceptance was refused. *Held*, that the plaintiff had no right of action of *indebitatus assumpsit* for the price of the horse, before the first of January. *Magner* v. *Johnston*, iii. 249.

176. The indorser of a promissory note is discharged from his liability by the holder taking new security, and giving time to the maker without the consent of the indorser. *Bank of the United States* v. *Lee*, iii. 288.

177. The indorsers of accommodation paper are to be considered as joint sureties, and liable to contribution. *McDonald* v. *Magruder*, iii. 298.

178. If two persons, without any communication or agreement between them, severally indorse a note for the accommodation of the maker, and the first indorser is obliged to take up the note, he may recover one half from his indorsee. *Magruder* v. *McDonald*, iii. 299.

179. A plaintiff who is not an indorsee of the note, has no right, at the trial, to strike out the words of a special indorsement written over the name of an indorser, so as to convert it into a blank indorsement; and upon such an indorsement the plaintiff cannot recover, although he afterward obtain the indorsement of the indorsee to himself, because he can only recover, in that action, according to his right of action at the commencement of his suit. *Bank of the United States* v. *Moore*, iii. 330.

180. See BANK, 9. *Bank of Columbia* v. *McKenny*, iii. 361.

181. The maker and indorser of a promissory note made and indorsed to be discounted for the accommodation of a third person, are not, in the usual course of mercantile transactions, co-sureties; and the indorser is not bound to contribute with the maker in paying the note, unless there be some previous agreement to that effect. *Law* v. *Stewart*, iii. 411.

182. If Sunday be the last day of grace, the demand, protest, and notice may be on Saturday; and if the protest be after banking hours on Saturday, the suit may be brought the same evening. *Mandeville* v. *Rumney*, iii. 424.

183. If a bank discount a note for the indorser at six per cent. and give postnotes having time to run, and not bearing interest, the transaction is usurious, and the bank cannot recover upon the note through such usurious indorsement, although the note itself, when given, was free from usury. *Farmers and Mechanics Bank* v. *Gaither*, iii. 440.

184. The plaintiff indorsed a note (as town indorser) already indorsed by two others, for the accommodation of the maker, and at maturity was obliged to take it up. *Held*, that he may recover of the first indorser the whole amount paid to take up the note. *Mason* v. *Mason*, iii. 648.

185. A promissory note of an emancipated slave, given to his master after, and in consideration of emancipation, is valid. *Negro William Smith* v. *Parker*, iii. 654.

186. The casual acknowledgement of the debt, to a stranger, may take the case out of the statute of limitations. *Bank of Columbia* v. *Moore*, iii. 663.

187. A note made "negotiable at the Bank of Washington," is not a note payable at that bank, and it is not necessary to demand payment there, in order to charge the indorser. *Beeding* v. *Thornton*, iii. 698.

188. The Court held that a note payable on its face at St. Louis, in Missouri, cannot be given in evidence upon a count on a note not so describing it;

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but that it may be given in evidence upon the count for money had and received; and a motion to appear without special bail was overruled. *Stone* v. *Lawrence*, iv. 11.

189. Notice to an indorser, if sent by mail, must be directed to the post-office of his place of residence. *Fowler* v. *Warfield*, iv. 71.

190. Notice of non-payment of a note for $1,457, is not notice of the non-payment of a note for $1,400. *Bank of Alexandria* v. *Swann*, iv. 136.

191. Notice of the non-payment of a note payable in the Bank of Alexandria, D. C., put into the post-office in Alexandria on the day after the last day of grace, addressed to the indorser in Washington, D. C., was too late, as the bank closed at three o'clock, P. M., and the mail for Washington did not close, in Alexandria, until nine o'clock, P. M. *Ibid.*

192. A note signed "Ford & Chapman," (they being partners and joint contractors,) and payable to the plaintiff, was held not to be admissible evidence to support an averment that the note was made by the defendants, "their own handwriting being thereunto subscribed;" not charging them as partners, and payable to the plaintiff or order. *Carrington* v. *Ford et al.* iv. 231.

193. A person, not a party to a note, who takes it up while lying in bank under protest, and takes a receipt as in payment of the balance due upon the note, cannot, in an action in the name of the bank, for his use, recover of the indorser; but if it were a sale or assignment of the note to him, he might. *Patriotic Bank* v. *Wilson*, iv. 253.

194. The indorser of a promissory note is discharged by the plaintiff's giving the maker time to pay by instalments. *Cope* v. *Hunt*, iv. 293.

195. A written promise absolutely to pay the note of a third person, written at the foot of the note, is an original undertaking, and need not express the consideration. *Fowler* v. *MacDonald*, iv. 297.

196. A guaranty of paper payable at the Branch Bank in Washington does not cover a note made in New York, and not made payable at that bank. *Dobbins et al.* v. *Bradley*, iv. 298.

197. The plaintiff may, at the trial, and after the jury is sworn, strike out the second and third blank indorsements, and fill up the blank indorsement to himself. *Stettinius* v. *Myers*, iv. 349.

198. In an action for goods sold at auction for cash, the defendant may set off the plaintiff's note. *Ibid.*

199. The defendant, the acceptor of a bill payable to the plaintiff out of an expected particular fund, received the fund, but paid it to the holder of a subsequent draft by the same drawer. *Held*, that the defendant was liable to the plaintiff in an action for money received to his use.

Interest may be given in damages for the non-payment of money received by the defendant to the plaintiff's use. *Grammer* v. *Carroll*, iv. 400.

200. An indorser who has been obliged to take up a note indorsed by two previous indorsers for the accommodation of the maker, may recover the whole amount from either of the two accommodation indorsers. *Mason* v. *Mason*, iv. 201.

201. A mistake in the date of a note, will not invalidate the notice given to an indorser. *Bank of the United States* v. *Watterston*, iv. 445.

202. A note at sixty days, with interest, will not be admitted in evidence to support the averment of a note at sixty days without interest. *United States* v. *John Lee*, iv. 446.

203. See BANK, 4. *Bank of the United States* v. *Davis*, iv. 533.

204. In order to prove notice to an indorser who is a clerk of a printing-office, and who has a separate room in which he attends daily to the business of the office, it is competent for the plaintiff to show, by evidence, that a written notice was left at such room, although the indorser was not there at the time. *Bank of the United States* v. *Macdonald*, iv. 624.

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205. After a note has been dishonored, and due notice has been given to all the indorsers, the defendant, the last indorser, is not discharged by the holder's taking a new note at sixty days, from a prior indorser for the balance due on the old note, and giving time to such prior indorser without the consent of the defendant. *Ibid.*

206. A negotiable note given by the tenant to his landlord, which, when paid, was to be received "on account of rent," is no bar to a distress for the whole rent due before the note became payable, although discounted for the landlord, and the proceeds received by him upon his indorsement of the note to a bank. *Griffin* v. *Woodword*, iv. 709.

207. If a creditor take a security by deed of trust of personal property for a debt due to him by an indorsed promissory note, and the debtor become tenant of the creditor, and rent is in arrear; and the creditor who is the landlord, distrain the goods conveyed to the trustee as security for the payment of the note, and the same goods are sold under the distress, and the proceeds paid over to the landlord; he is bound to apply the proceeds to the payment of the note, although the goods were found on the premises at the time of the distress; the same being there by the consent of the landlord as security for the note; and these facts are admissible in evidence on the part of the defendant, who is sued as indorser of the note. But, at law, the amount of the set-off cannot exceed the proceeds of the sales actually received by the plaintiff. *Bank of the United States* v. *Fleet Smith*, iv. 727.

208. A deposition taken in Louisiana before a person who calls himself "a commissioner duly appointed by the District Court of the United States for the Eastern District of Louisiana, under and by virtue of the Act of Congress, entitled, An Act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," and inclosed and directed to the clerk of this Court, may be read in evidence to the jury without further authentication. *Whitney* v. *Huntt*, v. 120.

209. Extracts from the notarial book of the deceased notary in Louisiana, proved by a witness who has the lawful possession of the books, and is authorized by the laws of Louisiana to certify the same, may be given in evidence in this Court, to prove demand of payment of a promissory note, and notice to the indorser. *Ibid.*

210. The Court will leave it to the jury to decide from the evidence where the indorser, the defendant, resided when the note fell due, and whether the post-office to which the notice was sent, was the nearest post-office to the defendant's residence; and will instruct them, that if the notice was put into the post-office, and directed to the defendant at the post-office nearest to his residence, it was sufficient notice, and that the holder had used due diligence in that respect. *Ibid.*

211. If new notes are taken by the holder of a note, and time given without the consent of the indorser of the old note, he is discharged. *White* v. *Burns*, v. 123.

212. The maker of a note is a competent witness, not to prove its original invalidity, but the improper use afterward made of it; and that time was given to him without the consent of the indorser. *Ibid.*

213. The jury cannot infer that the plaintiffs agreed to run the risk of a note's being a forgery, because it was passed to them long after it was dishonored, and at a discount of ten per cent. *Semmes* v. *Wilson*, v. 285.

214. A person who sells a note, is always understood as affirming that it is what it purports to be, that is, a genuine note. If it is not what it purports to be, it is nothing, and may be treated as a nullity, and it is not material whether it be given in payment of an antecedent debt or in exchange for goods immediately sold and delivered, or to be sold and delivered at a

BILLS AND NOTES, (*continued.*)
subsequent day. In the first case it would be no payment. In the second and third cases, there would be a total failure of the consideration, and the person who has parted with his property in exchange for a consideration which has failed, may resort to his original cause of action. *Ibid.*

215. To enable a plaintiff who has received from his debtor a forged note in payment of a preceding debt, to recover upon his original cause of action, it is not necessary for the plaintiff to prove that the defendant knew that the note was forged when he passed it to the plaintiff, or that he passed it fraudulently; it is only necessary for him to prove that the note was forged and passed to him by the defendant for a valuable consideration after it was dishonored. It is not necessary that the plaintiff should prove that he had instituted suits against the maker and indorser, and failed to recover in such suits. He has a right to establish the forgery in a suit directly against the party who passed the note to him. *Ibid.*

216. If the innocent *bonâ fide* holder of a forged note, which he has received for a valuable consideration, passes it to another innocent person *bonâ fide* and for valuable consideration, without indorsing it; although not liable upon the note, he is liable for the amount he has received for it; provided the other party has not been guilty of such negligence as would deprive the person from whom he received the note, of his remedy against prior parties, and has given notice and offered to return the forged paper in a reasonable time.
The person who passes away a forged note which has laid a long time dishonored in his hands, is not wholly free from blame in not having discovered the forgery, and on that ground may be held liable to refund to the person to whom he passed it, the consideration which he received. *Ibid.*

217. An action at law will not lie by an an indorsee against a remote indorser of a promissory note, made and indorsed in Virginia, although made payable at the North-west Bank of Virginia, by whose charter, notes "made negotiable" at that bank, are put upon the footing of bills of exchange; and although it should be put in circulation as a negotiable instrument, and deposited in the bank for collection before it became payable, and should be regularly protested, and regular notice given to the parties; an intermediate indorser of such a note is, therefore, a competent witness to invalidate the note. The rule that a party to an instrument shall not be permitted to discredit it by his testimony, is applicable only to mercantile negotiable paper, which a promissory note, made and indorsed in Virginia, is not. *Bradley* v. *Knox et al.* v. 297.

218. See AGENT, 1, 2, 3. *Bradley* v. *McKee*, v. 298.

219. An indorser of a promissory note, is a competent witness for the defendant, in an action by the indorsee against the maker. *Mason* v. *Masi*, v. 397.

220. The first purchaser of several city lots, having given his several note for each lot respectively, with the same indorser upon all, and the lots having been resold for his default, some of the lots bringing more, and some less than the first contract price; it was held that the indorser was entitled to the benefit of the surplus of one to make good the deficiency of the others. *Smith* v. *Arden*, v. 485.

221. See BANK, 6. *Farmers Bank* v. *Owen*, v. 504.

222. The defendant's note for $7,400, made payable directly to the plaintiffs on demand with interest, but not payable to order, and upon which there is an indorsement stating that it is held by the plaintiffs as collateral security for the defendant's obligation upon a previous note of Thomas Corcoran, senior, deceased, is not void under the statute of frauds, as being

BILLS AND NOTES, (*continued.*)
a promise to pay the debt of another, without a consideration therein expressed. *Union Bank* v. *Corcoran*, v. 513.
223. See AUTHORITY, 3. *Bank of Metropolis* v. *Moore*, v. 518.

BOND.
1. A defective forthcoming bond will, at the plaintiff's request, be quashed, as well as the execution upon which it was founded. *Sutton* v. *Mandeville*, i. 32.
2. Upon a bond conditioned to pay certain instalments, an action may be brought upon failure to pay the first instalment. *Nailor* v. *Kearney*, i. 112.
3. A forthcoming bond, given, by mistake, for a sum less than the judgment, may be quashed, with the execution, upon the plaintiff's motion, on payment of the costs of the motion. *Stephens* v. *Lloyd*, i. 141.
4. The marshal may include his commissions in a forthcoming bond; and is also entitled to his commissions upon an execution on the bond. *Thomas* v. *Brent*, i. 161.
5. The adding of a new surety, without the consent of the others, makes the bond void. *Long* v. *Oneale*, i. 233.
6. Sureties of an insolvent debtor in a duty-bond, are not entitled to judgment at the first term against their principal. *Johns* v. *Broadhag*, i. 235.
7. In an action upon a bond conditioned to pay money by instalments, if the verdict be rendered before all the instalments are due, the jury must find how much is due upon each instalment, and when payable; as well those to become payable as those already payable. *Davidson* v. *Brown*, i. 250.
8. Covenant will not lie upon the condition of an injunction-bond. *Summers* v. *Watson*, i. 254.
9. It is not necessary that the forthcoming bond should recite the return of the execution, nor the certificate of the service, nor the name of the person by whom it was served; but it must state that it was served. *Ambler* v. *McMechin*, i. 320.
10. A mistake in calculating the marshal's fees in a forthcoming bond, may be cured by a release; and judgment may be rendered for the true sum. *Ibid.*
11. A prison bounds bond may be assigned by a deputy marshal, in Alexandria. *Scott* v. *Wise*, i. 473.
12. If the plaintiff deliver his *fi. fa.* to the marshal and die, and the marshal levy it upon the goods of the defendant, he has a right, under the law of Virginia, to give a forthcoming bond, payable to the deceased creditor; and such bond will support a judgment, on motion by the administrator of the deceased creditor. *Entwisle* v. *Bussard*, ii. 331.
13. The surety in an official bond, conditioned that the principal shall faithfully execute the duties of the office, is not liable for the honest error in judgment, or want of skill of the principal, but gross negligence is want of fidelity. *Common Council of Alexandria* v. *Corse*, ii. 363.
14. If a creditor, having the bond of his debtor with a surety, take a new security payable at a day beyond the time of payment of the bond without the consent of the surety, with the understanding that he was not to trouble the principal for the money, unless the new security should be good for nothing, the surety is discharged, and his remedy is in equity. *Smith* v. *Crease*, ii. 481.
15. See BAIL, 1. *Jackson* v. *Simonton*, iv. 12.
16. See APPEAL, 4. *Bank of the Metropolis* v. *Swann*, iv. 139.
17. The marshal of the Southern Judicial District in the territory of Florida, could not lawfully enter on the duties of his office before he had given bond and taken the oath required by the 27th section of the Judiciary Act of September 24th, 1789. *Jackson* v. *Simonton*, iv. 255.

BOND (*continued.*)

18. It is not a compliance with the requirements of that act to give a bond to Andrew Jackson, President of the United States, and his successors in office, not executed by two good and sufficient sureties, inhabitants and freeholders of the district of which he was appointed marshal, and not approved by the judge of that district, and not purporting to be for the faithful performance of the duties of his office by himself and his deputies; and not correctly describing the office to which he had been appointed. *Ibid.*
19. The President of the United States had no authority from the United States to take a bond from a marshal payable to himself and his successors as President. *Ibid.*
20. The judge of the district was the only person designated by the Act of Congress to take the bond, and judge of the security, and he could only take it in the name of the United States. *Ibid.*
21. If the marshal was never qualified to enter upon the duties of the office, he could not violate those duties, and his sureties were not liable for any money which the officers of the government might have put into his hands before he was authorized to receive it. *Ibid.*
22. An increase of compensation allowed to a collector without consulting his sureties, does not discharge them. *Smith* v. *Addison*, v. 623.

BOOKS.

1. The party's own books of account are not evidence in his favor although in the handwriting of a deceased clerk, unless they contain the first entry of the charge. *Fendall* v. *Billy*, i. 87.
2. The defendant's book of account in his own handwriting, is not evidence for him, although it contain the first entry. *Bennett* v. *Wilson*, i. 446.
3. Judgment by default for not producing, at the trial, a paper which the defendant has been notified to produce, cannot be rendered unless there has been a previous order of the Court to produce it, founded upon a motion and notice. *Maye* v. *Carbery*, ii. 336; *Bank of the United States* v. *Kurtz*, ii. 342.
4. Upon motion of the plaintiff and notice, the Court will order the defendant to produce books and papers, on a certain day before the trial, that the plaintiff may have an opportunity to inspect them. *Central Bank* v. *Tayloe*, ii. 427.
5. If the defendant call for the books of the plaintiff, and upon their being produced, inspect them, the plaintiff may read them in evidence. *Coote et al.* v. *Bank of the United States*, iii. 50.
6. When books have been called by the opposite party and produced, it is competent for the party producing them to show by the testimony of a witness, that he has examined them, and that they do not contain any entries relating to the matters in controversy; the books themselves being in court for the inspection of the opposite party. *Id.* 95.
7. To enable a party to call on the other party to produce papers at the trial, there must be an order of the Court upon the party to produce them. That order must be served a reasonable time before the time for producing them. And there must be a reasonable notice also, of the motion for the order. *Macomber* v. *Clarke*, iii. 347.
8. A call for all the letter books of the bank from its institution to the time when the cause of action arose, was held to be too general. The Court will compel the production of such only as they are satisfied contain evidence pertinent to the issue. The party calling for books has no right to examine them before the trial, to see whether there may not be something in them pertinent to the issue. *Triplett & Neele* v. *Bank of Washington*, iii. 646.
9. It is not too late after jury is sworn to call for the books which the Court has ordered to be produced at the trial. *Wallar* v. *Stewart*, iv. 532.

BOOKS, (*continued.*)
10. If the party, calling for the books, inspect them, he makes them evidence for the other party. *Ibid.*

BRICKS.
1. A clamp is not a kiln. *Corporation of Washington* v. *Wheat*, i. 410.
2. Under the by-law of the Corporation of Washington of the 14th of August, 1819, no person or officer was authorized to grant a license to erect or use a brick-kiln in that city. *Ward* v. *Corporation of Washington*, iv. 232.
3. The continued use of a brick-kiln without license is a single offence, the penalty for which is, by the by-law, to be measured by the number of weeks it is used; and all the weeks elapsed before prosecution, must be included in that prosecution; but the by-law is so imperfect that it will not sustain a prosecution in any form. *Ibid.*
4. It is in the discretion of the Court to allow or refuse costs upon the reversal of a judgment of a justice of the peace. *Ibid.*
5. Under the power to prevent nuisances, and to superintend the health of the city, the corporation had a right to prohibit the erection and use of brick-kilns. *Ibid.*

BRITISH TREATY.
1. The statute of limitations is not a bar to a British debt contracted before the treaty of peace. *Dunlop* v. *Alexander*, i. 498.
2. A British creditor who took a bond from his debtor payable to a citizen of the United States, cannot avoid the statute of limitations under the clause in the treaty removing all legal impediments, &c. *Auld* v. *Hoyl*, i. 544.

BURGLARY.
1. A storehouse, not within the curtilage, but in which the owner's clerk usually sleeps is, in law, the mansion-house of the owner, and burglary may be committed therein. *United States* v. *Johnson*, ii. 21.
2. If a slave, lodging in the house, lifts the latch of his mistress's sleeping-room in the night-time and enters with an axe in his hand, with intent to murder her, he is guilty of burglary; and to constitute an attempt to murder, no further act of violence is necessary. *United States* v. *Bowen*, iv. 604.

BY-LAW.
1. If the information upon a by-law states that the penalty accrued to the Commonwealth, whereas by the charter it accrued to the town, the judgment must be arrested. *Commonwealth* v. *Hooff*, i. 21.
2. The Alexandria By-Laws of 1784, apply to the subsequent addition made to the town. *Commonwealth* v. *Smith*, i. 47.
3. No information or indictment will lie upon a by-law of the Corporation of Alexandria. *Commonwealth* v. *Howard*, i. 61.
4. The original by-laws of Georgetown need not be made under the seal of the corporation. *Holmead* v. *Fox*, i. 138.
5. A warrant to recover the penalty of a by-law, must name the plaintiffs by their corporate name, and must describe the offence with reasonable certainty. *Barney* v. *Corporation of Washington*, i. 248.
6. The Mayor of Washington cannot exercise jurisdiction in a case in which he is a party. *Ibid.*
7. Burning bricks in a clamp is not a violation of a by-law against burning bricks in a kiln. *Corporation of Washington* v. *Wheat*, i. 410.
8. A by-law approved on the 27th, will not support an averment of a by-law passed on the 26th. *Corporation of Alexandria* v. *Brockett*, i. 505.
9. The receipt of the dog-tax, after suit brought, is a waiver of the penalty. *Boswell* v. *Corporation of Georgetown*, ii. 18.
10. The by-law of Georgetown, prescribing a penalty for keeping a public gaming-table, does not supersede nor repeal the Maryland Act of 1797,

BY-LAW, (*continued.*)

c. 110, prescribing a penalty for keeping a faro-table in a house occupied by a tavern-keeper. *United States* v. *Wells*, ii. 45.

11. The Common Council of Alexandria has no authority to make by-laws operating beyond the limits of the town as described in the Acts of Virginia of December 13th, 1796, and 8th of January, 1798. And the jurisdiction of the mayor is confined to the same limits; nor can the corporation enforce its by-laws by corporal punishments. *Ex parte Joseph Deane*, ii. 125.
12. A conviction of the offence of keeping a faro-bank contrary to a by-law of the corporation of Alexandria, is no bar to an indictment at common law for keeping a disorderly house, supported by the same evidence. *United States* v. *Robin Hood*, ii. 133.
13. The by-law of Alexandria requiring a master to pay a poll-tax for his journeymen, is not repugnant to the general law of the land, and is authorized by the charter. *Morgan* v. *Rowan*, ii. 148.
14. The Common Council of Alexandria have power to prohibit, by their by-laws, the keeping of gaming-tables in the town, under a penalty, to be recovered by warrant before the mayor, in the name of the common council, and to be levied upon the goods and chattels of the offender, although he may be also liable to prosecution under the laws of Virginia adopted by the Act of Congress of the 27th of February, 1804. *McLaughlin* v. *Stephens*, ii. 148.
15. See ACTION, 5. *Pritchard* v. *Corporation of Georgetown*, ii. 191.
16. It is not necessary that an order of the common council, for the pavement of any particular street in Alexandria should be passed as a by-law and submitted to the mayor for his approbation. *Common Council* v. *Mandeville*, ii. 224.
17. The by-law of Washington, of the 14th of April, 1821, which prescribes the terms on which free colored persons may reside in the city, is not, in its prospective operation, repugnant to the Constitution of the United States. *Billy Costin* v. *Corporation of Washington*, ii. 254.
18. The warrant of a justice of the peace, for the violation of a by-law, must set forth the offence substantially within the purview of the by-law. *White* v. *Corporation of Washington*, ii. 337.
19. A warrant, for the violation of a by-law, should specify the by-law, and the manner of violating it; so should the judgment. *Boothe* v. *Corporation of Georgetown*, ii. 356.
20. No appeal lies to this Court from the judgment of a justice of the peace, for the penalty of a by-law of Georgetown. *Ibid.*
21. Upon appeal from the judgment of a justice of the peace for the penalty of a by-law, the judgment will be reversed with costs, if the warrant does not set forth the offence with sufficient certainty. *Delany* v. *Corporation of Washington*, ii. 459.
22. A warrant, charging that the defendant, "did, during the last or present month, sell spirituous or other liquor without a license, contrary to the act or acts of the mayor, &c., on that subject made and provided," is too vague and uncertain to support a conviction. *Ibid.*
23. Rye-chop is not "provisions," nor an article of food within the meaning of the by-law of Washington of October 6th, 1802. To constitute the offence it is not necessary that there should be any market holding at the time of the purchase. *Botelor* v. *Corporation of Washington*, ii. 676.
24. A warrant, issued by a justice of the peace for the penalty of a by-law, ought to state all the circumstances required by the by-law to constitute the offence; but the Court will disregard all such defects as would be disregarded after verdict in an action of debt, or information upon a penal statute. *McGunnigle* v. *Corporation of Washington*, ii. 460.

BY-LAW, (*continued.*)

25. No penalty was prescribed by the by-law of July 19, 1804, against hawkers and pedlers for not taking out a license. The by-law is not correctly stated in Burch's Digest, p. 102. *Corporation of Washington* v. *Townsend*, iii. 653.
26. A justice of the peace in the city of Washington, has authority under the charter of May 4, 1812, and the by-law of December 16, 1812, § 7, to require a common prostitute to give security for her good behavior; and has jurisdiction of a suit upon the bond therefor, the penalty not exceeding twenty dollars. *Dolly Ann Patten* v. *Corporation of Washington*, iii. 654.
27. A conviction under the by-law of August 16, 1809, is no bar to an indictment for a nuisance by keeping a common gambling-house. *United States* v. *Holly*, iii. 656.
28. A person residing or having real estate, in Georgetown, D. C., is bound to take notice of the charter and by-laws. *Corporation of Georgetown* v. *Smith*, iv. 91.
29. A person indebted for taxes on real estate in Georgetown, and availing himself of the benefit of the ordinance of June 15, 1822, by giving his notes therefor, creates an equitable lien on the real estate, of which a purchaser is bound to take notice, and is liable to pay the taxes with interest, in the same manner as the vendor was bound. *Ibid.*
30. A warrant upon the by-law of the city of Washington of January 12, 1830, § 1, for setting up a faro-table, must state it to be for the purpose of gaming for money. *Corporation of Washington* v. *Cooly*, iv. 103.
31. The keeping of a faro-table contrary to the by-law of the Corporation of Washington of June 12, 1830, is a single offence, although continued for many days, and although the penalty is fifty dollars a day; yet, as the prosecution must be before a single magistrate, whose jurisdiction cannot exceed fifty dollars, no greater sum can be recovered upon any one warrant. A conviction or acquittal, upon any such warrant, is a bar to all acts of keeping prior to the issuing of such warrant. The day laid in the warrant is not material, so that the time actually proved be subsequent to a former prosecution, (if there has been any such,) and before the issuing of the present warrant, and within the time of limitation. If the corporation would avail themselves of the daily penalty, they must issue their warrants daily. *Dixon* v. *Corporation of Washington*, iv. 114.
32. See BRICK-KILN, 1, 2, 3, 4. *Ward* v. *Corporation of Washington*, iv. 232.
33. There is no law in the county of Washington, D. C., to justify the commitment of a man to hard labor, by a justice of the peace, for playing at cards, even if he be a free black or mulatto, and unable to pay the fine imposed on him by the justice. *Ex parte Thomas Williams*, iv. 343.
34. The eighth section of the by-law of May 31, 1827, is not, so far as it authorizes a commitment to the work-house, for the non-payment of a fine, warranted by the charter, except in the case of the nightly and other disorderly meetings of slaves, free negroes, and mulattoes, who are unable to pay the fine. *Ibid.*
35. By the eighth section of the charter, the only persons who can be confined to labor for not paying a fine, are free negroes and mulattoes who are unable to pay the penalty.

    Confinement to labor is a severe proceeding, and should be confined to the case in which alone it is authorized by the charter. The power was not originally given as a substituted punishment in lieu of the penalty. In case of inability to pay, he is to give an equivalent in labor. The corporation had no authority to compel a person to labor, who was able and refused to pay. The by-law which attempts to give authority to a justice to commit the defendant to labor for a refusal to pay, is not warranted by

BY-LAW, (*continued.*)
the charter. A commitment under the by-law must charge that the offence was committed by a free black or a mulatto. *Ibid.*
36. Fines, penalties, and forfeitures, under by-laws of the Corporation of Washington, not exceeding fifty dollars, are recoverable before a justice of the peace. *Ex parte Julia Reed*, iv. 582.
37. There does not appear to have been given to the Corporation of Washington, by any of its charters, or the amendments thereof, any authority directly to punish any free person corporally, for the breach of its by-laws. It can only impose fines, penalties, and forfeitures, for the violation of its ordinances, to be recovered as debts. The only case in which labor may be added to imprisonment for the non-payment of a fine, is that of a free negro or mulatto who has been convicted of being present at a disorderly meeting, and who is unable to pay the fine; for, if he is able to pay, it may be recovered by the ordinary process of execution. If unable to pay in money, it was intended, by the charter, that he should pay in labor; and he could not be forced to labor unless confined. Hence it was provided that he should be confined to labor, instead of a simple imprisonment upon a *ca. sa.* It was not so much intended as a punishment as a means of recovering the penalty. *Ibid.*
38. In all cases of breach of the by-laws, the prosecution is by action of debt, and the judgment can be only for the fine, penalty, or forfeiture. In ordinary cases the execution to enforce the payment is a *ca. sa.*, *fi. fa.*, or attachment. In the case of the inability of a free negro or mulatto to pay the fine for the offence of disorderly meeting, it may be by commitment to labor for a limited time. The difference is not in the judgment, but in the execution. In all cases the prosecution is for the recovery of the penalty. A fine or penalty incurred by the breach of a by-law is a debt, and recoverable as such. *Ibid.*
39. The Corporation of Washington has authority, under its charter, to require security for good behavior of persons guilty of grossly indecent language or behavior, publicly in the streets, and to cause them to be confined to labor if they refuse or are unable to give the security required. And the justices of the peace, individually, have the authority to require the security, and to commit for want of it; but the indecent language or behavior must be public in the streets. That part of the by-law which requires security to be given by persons guilty of simple "profane or indecent language or behavior," is not warranted by the charter, and is void. But so far as it requires security to be given by disorderly persons, it is valid. *Ibid.*
40. The warrant of commitment should state that the party was required to give the security, the amount of the security required, and for what period of time; so that it might appear that the amount and time were reasonable. The commitment may be to labor, but not to hard labor. *Ibid.*
41. A member of the Board of Aldermen of the city of Washington, is not a competent magistrate to convict a person of a violation of the by-laws of the corporation. *Hall* v. *Corporation of Washington*, iv. 722.
42. A justice of the peace may reject a plea of misnomer in abatement. *Ibid.*
43. A justice of the peace has jurisdiction of penalties under by-laws, not exceeding fifty dollars. *Ibid.*
44. The Corporation of Washington has authority to restrain and prohibit gaming in the city. *Ibid.*
45. An appeal lies to the Circuit Court of the District of Columbia for Washington county, from the judgment of a justice of the peace for the penalty of a by-law of the Corporation of Washington, although the amount of the penalty be discretionary within certain limits. That discretion does not deprive the party of his right of appeal. *Corporation of Washington* v. *Eaton*, iv. 352.

BY-LAW, (*continued.*)
46. The power given by Congress to the Corporation of Washington, to pass by-laws for the government of the city, is not a delegation of the power of exclusive legislation given to Congress by the Constitution of the United States. *Ibid.*
47. The power given by the charter "to prevent and remove nuisances," and "to provide for the prevention and extinguishment of fires," authorized the corporation to pass the by-law of March 30, 1813, against any person who shall "fire or shoot a gun, pistol, or other fire-arm, idly, or for sport or amusement, within two hundred and fifty yards of any dwelling-house," &c. *Ibid.*
48. A *qui tam* action will not lie on the by-law of March. 30, 1813. *Ibid.*
49. It is not necessary that the order for the appeal should be under the corporate seal. *Ibid.*
50. It is not necessary that the justice who takes cognizance of the case, should be one of those to be designated under the sixth section of the by-law of November 8, 1830. *Ibid.*
51. It is not necessary that it should appear upon the proceedings before the justice, that the by-law had been published five days in some newspaper by authority of the corporation. *Ibid.*
52. The ten days' notice required by the seventh section of the Act of Congress of March 1, 1823, was for the benefit of the appellant, not of the appellee. *Ibid.*
53. See CORPORATION OF WASHINGTON. *United States* v. *Gorman*, iv. 574.
54. A keeper of a wood-yard in the city of Washington is a retailer within the meaning of that clause in the charter which authorizes the corporation "to provide for licensing, taxing, and regulating auctions, retailers, ordinaries, and taverns, hackney-carriages, &c. *Corporation of Washington* v. *Casanave*, v. 500.
55. The Corporation of Washington, under the power to restrain and prohibit the nightly and other disorderly meetings of slaves, free negroes, and mulattoes, has a right to prohibit them to be out after ten o'clock, P. M. *Jennings* v. *Corporation of Washington*, v. 512.
56. The Corporation of Washington has power to make a by-law to prevent free colored persons from going at large through the city later than ten o'clock, P. M., without a pass, &c. *Nichols* v. *Burch et al.* v. 553.
57. The Corporation of Washington has power, under its charter, to prohibit ordinary-keepers to sell spirituous liquors to free colored persons. *Corporation of Washington* v. *Lasky*, v. 381.

CALENDAR MONTHS.
See BANK, 7. *Union Bank* v. *Forrest*, iii. 218.

CAPIAS.
1. A *capias* is the proper process upon an indictment for misdemeanor, found, in Alexandria, after a summons to show cause why an indictment or information should not be filed. *United States* v. *Veitch*, i. 81.
2. Upon surrender of the debtor upon a *ca. sa.*, the Court will not, without motion, order him to be committed in execution. *Peter* v. *Suter*, i. 311.

CASE.
1. A person who has a right to do an act, has a right to use the necessary means. *Hooe* v. *The Mayor and Commonalty of Alexandria*, i. 98.
2. In an action upon the case under the Virginia Act of January 25, 1798, § 6, against the master of a vessel, for carrying away the plaintiff's slave, the defendant is not liable unless he knew that the slave was on board. *Lee* v. *Lacey*, i. 263.
3. In an action upon the case against the owner of a stage-coach, for taking away the plaintiff's slave, evidence may be given on the part of the defendant, that the plaintiff had given the slave a written permission to

CASE, (*continued.*)
seek a new master; and if such permission be without any limitation of time or place, the plaintiff cannot recover. *Harrison* v. *Evans*, i. 364.
4. In an action upon the case against a deputy postmaster, the instructions of the postmaster-general may be given in evidence. *Dunlop* v. *Munroe*, i. 536.
5. Deputy postmasters are civilly liable for the acts of their servants and clerks; but the neglect of the servant or clerk cannot be given in evidence upon a count charging the loss to have been incurred by the neglect of the deputy postmaster himself. *Ibid.*
6. In a case stated, the Court cannot infer any fact, as they may upon a demurrer to evidence. *Bank of Alexandria* v. *Deneale*, ii. 488.

CASUALTY.
A casualty happening against the will and without the negligence or other default of the party, is, as to him, an inevitable casualty. *Hodgson* v. *Dexter*, i. 109.

CERTIORARI.
1. In forcible entry and detainer, it is not necessary that it should appear, upon *certiorari*, that the inquest was taken on the spot where the force was used; nor that the jurors should appear to be qualified according to the requisites of the common law. *United States* v. *Donahoo*, i. 474.
2. In Alexandria county, a *certiorari* in forcible entry and detainer may be issued by one judge in vacation; and the inquisition may be traversed. No plea will be allowed but a traverse of the force, and a possession for three years. *United States* v. *Browning*, i. 500.
3. A *certiorari* will lie from the Circuit Court, D. C., to a justice of the peace who is proceeding in a case in which he has no jurisdiction. It will issue upon the affidavit of the defendant. It is the proper writ where a justice of the peace usurps a jurisdiction which belongs exclusively to this Court. If the justice has no jurisdiction in the case, his proceedings are absolutely void; and this Court will proceed to try the cause according to law. *Kennedy* v. *Gorman*, iv. 347.
4. A *certiorari* will not lie to bring up the proceedings of justices of the peace, under the Maryland statute of 1793, c. 43, against tenants holding over. *Lenox* v. *Arguelles*, iv. 477.
5. Upon the return of a *certiorari*, it appeared that a justice of the peace in Georgetown, D. C., had rendered judgment for the penalty of $20 for selling a lottery-ticket without a license from the Corporation of Georgetown; this Court decided that if the business of selling lottery-tickets was lawful, the corporation had no power to restrain it; if unlawful, no power to license it. *Nicholls* v. *Corporation of Georgetown*, iv. 576.
6. The Circuit Court, District of Columbia, has jurisdiction to issue a *certiorari* to a justice of the peace in a case of forcible entry and detainer; and in vacation the writ may be ordered by one of the judges. Bond and security must be given for costs.
An inquisition describing the property as "one tenement or storehouse with the appurtenances in the county aforesaid," is too vague and uncertain, and will be quashed. *Holmead* v. *Smith*, v. 343.
7. A *certiorari* does not lie to a justice of the peace in a case of which he has jurisdiction. *Homans* v. *Moore*, v. 505.
8. A plaintiff may relinquish interest upon an open account, and bring his action for the principal sum only, before a justice of the peace, if the principal does not exceed $50, although, with interest, the debt would exceed that sum. *Ibid.*

CHALLENGE.

1. Peremptory challenge is allowed only in capital cases in Alexandria. *United States* v. *Carrigo*, i. 49.
2. The Court will not ask a juror before he is sworn, whether he has formed and delivered any opinion as to the case; but will leave the party to his challenge for favor. *United States* v. *Johnson*, i. 371.
3. In manslaughter a peremptory challenge is allowed under the Virginia law. *United States* v. *McLaughlin*, i. 444.
4. It is not a principal cause of challenge, that the juror has had conversations with some of the parties; but it is evidence for the consideration of triors upon a challenge for favor. *Young* v. *Marine Ins. Co.* i. 452.
5. If, after eight jurors have been sworn, the defendant challenge one for favor, the challenge shall be tried by the jurors already sworn. *Negro Reuben* v. *Bridges*, i. 477.
6. A juror shall not be examined on oath as to his religious opinions on the subject of slavery; nor will the Court, upon a challenge for favor, suffer evidence to be given to the triors, as to the prevailing opinion of individuals of the religious sect to which the juror belongs. *Ibid.*
7. Peremptory challenge is not allowed in cases of larceny in Washington county. *United States* v. *McPherson*, i. 517.
8. The two jurors first sworn in a cause, are the proper triors of a challenge for favor. *Joice* v. *Alexander*, i. 528.
9. The Court will not permit counsel to argue to the triors upon a challenge for favor. *Ibid.*
10. The challenged juror cannot be examined as a witness to the triors. *Ibid.*
11. In all cases of felony, by the laws of Virginia, the prisoner is entitled to a peremptory challenge of twenty jurors. *United States* v. *Browning*, i. 330.
12. Peremptory challenge is not allowed, in Washington, in cases of horse-stealing. *United States* v. *Toms*, i. 607.
13. Alienage is not a cause of challenge of a juror. *Mima Queen* v. *Hepburn*, ii. 3.
14. Challenge for favor is to be tried by the two jurors first sworn in the cause. *Ibid.*
15. Peremptory challenge is allowed in manslaughter. *United States* v. *Craig*, ii. 36.
16. Peremptory challenge is not allowed, except in capital cases. *United States* v. *Smithers*, ii. 38.
17. In Alexandria county, peremptory challenge is allowed in larceny. *United States* v. *Negro Peter*, ii. 98; *United States* v. *Gee*, ii. 163.
18. Peremptory challenge is allowed in bigamy in Alexandria. *United States* v. *Lambert*, ii. 137.
19. Peremptory challenge is allowed in Alexandria for counterfeiting bank-notes. *United States* v. *Woods*, ii. 164.
20. Peremptory challenge allowed where the punishment may be death. *United States* v. *Black*, ii. 195.
21. Peremptory challenge not allowed in Washington in horse-stealing. *United States* v. *Krouse*, ii. 252.
22. Peremptory challenge, in cases for freedom, in Washington. *Negro Matilda* v. *Mason*, ii. 343.
23. It is a good cause of challenge for favor, that the juror is a quaker, and has conscientious scruples as to the lawfulness of taking away human life for any offence. *United States* v. *Betsy Ware*, ii. 477.
24. Upon an indictment for unlawfully carrying a challenge to fight a duel, a *scienter* must be proved. *United States* v. *Shackelford*, iii. 178.
25. It is no legal objection to a juror, that he had been one of the jurors in

CHALLENGE, (*continued.*)

another cause against the same defendant for a different offence; and it seems that the Court has no authority to order talesmen to be sworn until the regular panel has been exhausted; and the names of all the attending jurors will be put into the box, and twelve drawn by lot from the box by the clerk. *United States* v. *Watkins*, iii. 441.

26. The juror when called up to be sworn, may be asked whether he has "formed and expressed an opinion as to the guilt or innocence of the defendant upon the indictment in this case;" and before the question is put, the indictment may be read by the clerk in the hearing of all the jurors attending the Court. If the question be answered in the negative, the juror may still be challenged for cause; and if challenged for favor, the challenge will be tried by two jurors, appointed by the Court, who are to be sworn upon each challenge; and if they cannot agree, the challenge is not supported, and the juror must be sworn. *Ibid.*
27. After a juror is sworn he cannot be challenged, and the Court cannot discharge him without the consent of the parties, although he should state to the Court, matters which would be proper evidence upon a challenge for favor. *Ibid.*
28. When a *tales* is returned, the parties have a right to challenge any of the original panel already sworn in chief, but it must be for a cause arising after the juror was sworn. *Ibid.*
29. Peremptory challenge allowed upon an indictment for stealing a slave in Alexandria, D. C. *United States* v. *Summers*, iv. 334.
30. A peremptory challenge is not allowed in arson. *United States* v. *Henry H. White*, v. 73.

CHANCELLOR OF MARYLAND.

1. On the 26th of October, 1801, after Congress had, by the Act of February 27th, 1801, exercised exclusive legislation over the District of Columbia, the Chancellor of Maryland had jurisdiction to decree a conveyance, by an infant, of lands in that district, in pursuance of a contract made by the ancestor of the infant; the suit for a specific performance having been commenced before Congress had exercised such exclusive legislation. *Bank of the United States* v. *Van Ness*, v. 294.
2. The Chancellor of Maryland, on the 26th of October, 1801, decreed that the infant, Marcia Burns, should, in a certain event, by W. M. D., her guardian *ad litem*, convey to I. P. V., the purchaser, the property in question. Upon the happening of the event, a deed purporting to be from the infant by her guardian, and concluding thus: "In witness whereof the said Marcia, by W. M. D., her guardian in this case, hath hereunto set her hand and seal, the day and year before mentioned," was signed by the said W. M. D. guardian of the said Marcia Burns, and sealed with his seal. The commissioner who took the acknowledgment, certified that the said W. M. D. acknowledged the instrument to be "his act and deed, as guardian as aforesaid, and thereby the act and deed of the said Marcia." *Held*, that this deed, thus signed, sealed, delivered, acknowledged, and duly recorded, was a good and sufficient execution of the decree; and a good deed to pass the land to the purchaser; and that if it be not, yet, by the Act of Maryland, 1785, c. 72, § 14, the decree itself stands as a conveyance. *Ibid.*

CHANCERY.

1. It is not necessary to give notice of an application for an injunction. *Love* v. *Fendall*, i. 34.
2. An answer in chancery is not sufficiently authenticated, unless the authority of the justice of the peace before whom it was sworn, be shown. *Addison* v. *Duckett*, i. 349.

CHANCERY, (*continued.*)

3. In a chancery attachment, if the subpœna be served on the principal, there must still be an affidavit of non-residence, and an order of publication according to the Virginia law. *Dean* v. *Legg et al.* i. 392.
4. A material amendment of a bill, after answer, must be on payment of all costs, including a solicitor's fee. *Wallace* v. *Taylor*, i. 393.
5. At the hearing of a cause in chancery, the Court will not receive *viva voce* testimony, unless to prove exhibits. *Debutts* v. *Bacon*, i. 569.

CHANGE OF VENUE.

The Court refused to rescind the order for change of venue, on account of insufficiency of the affidavits upon which it was granted. *Kounsalaer* v. *Clarke*, iv. 98.

CHARITABLE USES.

1. A devise in trust to lay out $200 a year in wood, meal, and clothing, to be distributed among the poor and necessitous widows and orphans within the corporation of Georgetown, is void for uncertainty. *Barnes* v. *Barnes*, iii. 269.
2. The statutes of mortmain are in force in Maryland, but the statute of charitable uses, is not, and was not when the county of Washington was separated from the State of Maryland. *Ibid.*
3. If either the object of the legacy, or the person of the legatee, or *cestui que trust*, be so uncertain that no one can show a title to claim the legacy, or to enforce the execution of the trust, the legacy and the trust are void, even in case of an executory devise. If it be an executed, not an executory, devise, it is void if there be no person competent to take at the death of the testator. An executory devise is void if it be not necessarily to be executed within a life in being at the death of the testator, or within twenty-one years thereafter. *Ibid.*

CHARTER-PARTY.

1. A clause in a charter-party, that "during obstruction of the navigation by ice, the lay days are not to be counted," applies to such obstruction as prevents the lading of the vessel, as well as to such as prevents her going to sea. *Ladd* v. *Wilson*, i. 293.
2. In a charter-party, the words, "charter and to freight let" do not imply a covenant, in law, that the vessel is or shall be seaworthy. *Bowie & Kurtz* v. *Wheelwright*, ii. 167.
3. See AFFIDAVIT, 12. *Winter* v. *Simonton*, ii. 585.
4. In an action of covenant, by two survivors, upon a charter-party made with three persons, the declaration should state the death of one and aver that the defendant had not paid the money to the three, nor to either of them. *Winter et al.* v. *Simonton*, iii. 62.
5. An agreement to hire a vessel, "from Bath to Havana and from thence to Mobile or elsewhere, in any legal trade for the space of twelve months, at and after the rate of $425 a month; $600 to be paid on the arrival of the brig at Havana," the owners covenanting "that the said brig shall be tight, stiff, staunch, and strong, and well victualled and manned at their own expense, during that period, the dangers of the sea only excepted," the hirer paying "all port-charges and pilotage," at every place to which she may go; is not a contract of freight.

   With regard to the destination and loading of the vessel, the hirer is owner *pro hac vice*. The general owner is not bound to see that the master performs the voyages indicated by the hirer; the master and mariners being, in that respect, subject to the order and control of the hirer. *Id.* 104.
6. In an action for the hire of a vessel according to the terms of a sealed

CHARTER-PARTY, (*continued.*)
agreement, the defendant, by pleading, that he had paid to the plaintiffs all and every such sums of money as were become due and payable from the said defendant, according to the tenor and effect of the said articles of agreement," assumes upon himself the burden of proving that he had paid the hire of the vessel for the time and at the rate stated in the declaration, and the plaintiffs are not bound to prove any of the facts therein charged. *Ibid.*

CHEAT.
1. Upon conviction of cheating at cards, in Alexandria, the jury will assess the fine at five times the value lost, and the Court will add imprisonment. *United States* v. *Bascadore*, ii. 25.
2. The Court refused to quash an indictment for a conspiracy to cheat, by selling a free negro as a slave. *United States* v. *Spalding et al.* iv. 616.

CHESAPEAKE AND OHIO CANAL.
1. The instalments due by the subscribers to the Chesapeake and Ohio Canal Company, may be recovered, on motion, with costs. *Chesapeake and Ohio Canal Company* v. *Poor*, iii. 598.
2. To condemn the land of an individual for the use of the Chesapeake and Ohio Canal Company, is to take private property for public use. *Chesapeake and Ohio Canal Company* v. *Key*, iii. 599.
3. The damages assessed by the jury must be considered as the "just compensation" required by the amendment of the Constitution, which forbids the taking of private property for public use without just compensation. That compensation must be just toward the public, as well as just toward the individual whose property is taken. *Ibid.*
4. The charter, granted by Virginia, having been ratified and confirmed by Congress, became as much an Act of Congress, so far as it is applicable to the District of Columbia, as if it had been re-enacted with such modifications as might be necessary to fit it for use in the district. *Ibid.*
5. The power to take private property for public use, upon just compensation, is not a power in derogation of common right. All property is held subject to that power; and the right thus to take private property for public use is as much common right as is that of the individual. The canal is a great highway, and all lands are held subject to the right of the public to make a highway through them. *Ibid.*
6. The charter should be so construed as to carry into effect the will of the legislature. The words "from" and "at" do not always exclude the place to which they refer. The beginning of the eastern section of the canal is not precisely fixed by the charter, but is left to the discretion of the company, with this limitation only, that it should be in the District of Columbia and upon tide-water. *Ibid.*
7. A certain day must be fixed, in the warrant, for the meeting of the jury upon the land, and the want thereof is fatal to the inquisition. *Ibid.*
8. It is not necessary that an inquisition taken under the charter of the Chesapeake and Ohio Canal Company should contain the names of such jurors as were summoned, but not sworn. *Chesapeake and Ohio Canal Company* v. *Binney*, iv. 68.
9. The land condemned is sufficiently described by reference to the description in the warrant. *Ibid.*
10. Where several warrants have been issued and returned with inquisitions for condemning land, and each inquisition refers to the warrant returned therewith, it is competent to prove, by parol, which warrant is applicable to each inquisition. *Chesopeake and Ohio Canal Company* v. *Union Bank*, iv. 75.
11. The jury ought to ascertain and describe the bounds of the land by them

CHESAPEAKE AND OHIO CANAL, (*continued.*)
valued, and the quality and duration of the interest and estate in the same. *Ibid.*
12. The Canal Company is the sole judge what interest in the land will be necessary for their operations; and the jury are to value such interest as the company shall require. *Ibid.*
13. The charter does not require notice to the party where lands are sought to be condemned, and therefore the inquisition need not state that such notice has been given; but it ought, in fact, to be given, if the party be, at the time, in the county. *Ibid.*
14. It is not necessary that the inquisition should state the value of the land separately from the damages. The benefit to the owner may as well be set off against the value of the land as against the damages. *Ibid.*
15. *Quære*, whether it be necessary that the jury should ascertain the bounds of the land upon the land itself by metes and bounds? *Ibid.*
16. In authorizing the condemnation of lands for a highway, the United States only claim to exercise the power which belongs to every sovereign, to appropriate private property to public use. *Ibid.*
17. An inquisition condemning more land than can be reasonably required for the use of the company; or if the bounds are not ascertained with certainty, will be set aside by the Court. *Chesapeake and Ohio Canal Company* v. *Mason*, iv. 123.
18. The original subscribers to the Chesapeake and Ohio Canal Company are bound by the alterations of the charter made by subsequent acts of legislation with the consent of the corporation. *Chesapeake and Ohio Canal Company* v. *Robertson*, iv. 291.
19. If a contract with the Chesapeake and Ohio Canal Company be declared by them "abandoned" for non-compliance with the terms thereof, according to a right reserved to the company, by the contract, the contractors do not thereby forfeit the money they have earned up to the time of abandonment, except the twenty per cent. reserved as security for the execution of the work contracted for; although by the terms of the contract, upon the contract being declared "abandoned" it was agreed that the company should be exonerated from every obligation thence arising; and that the reserved percentage on the contract price should become the property of the company to indemnify them for such "breach of contract." *Miller et al.* v. *Frink et al.* iv. 451.
20. See ATTACHMENT, 8. *Davidson* v. *Donovan*, iv. 578.
21. Under the contract between the plaintiff and the Chesapeake and Ohio Canal Company the final estimate by the engineer of the amount and value of the work done by the contractor was to be conclusive unless objected to within twenty days. The plaintiff within the twenty days, objected to the estimate as to price, but not as to the quantity of work done. Held, that he cannot after the twenty days, object to the estimate as to the quantity of the work done. It is conclusive between the parties. *Carothers* v. *Chesapeake and Ohio Canal Company*, iv. 698.
22. The lots in the city of Washington lying on Rock Creek are entitled to the water privilege in front of them, although separated from them by a public street, unless the bank of the creek lies between the street and the creek. And the owner of the lots is entitled to the condemnation-money awarded for the water privilege in front of them, condemned for the use of the Chesapeake and Ohio Canal Company. *Chesapeake and Ohio Canal Company* v. *Union Bank*, v. 509.

CIRCULATING MEDIUM.
If the president of the "Independent Manufacturing Company of Baltimore," passed away the notes of that company for the purpose of putting

CIRCULATING MEDIUM, (*continued.*)
them into circulation as a current circulating medium, and not for goods and for the use of the company in the ordinary course of their business, with a view to defraud or injure any person, he was guilty of an indictable offence. *United States* v. *Ray*, ii. 141.

CITY LOTS.
See ALLEYS. *Brent* v. *Smith*, v. 672.

CITY SURVEYOR.
It is the duty of the Surveyor of the city of Washington to attend when requested, and examine the foundation or walls of any house to be erected when the same shall be level with the street, or surface of the ground, for the purpose of adjusting the line of the front of such building to the line of the street, and correctly placing the party wall on the line of division between that and the adjoining lot; and his certificate is evidence, and binding on the parties interested; but it is not necessary to the plaintiff's right of action for half the value of the wall, that it should have been so adjusted by the surveyor; or that the walls should be of the thickness required by the third article of the commissioners' regulations of the 20th of July, 1795.
The value of half of the wall may be recovered in an action upon the case in assumpsit. *Miller* v. *Elliot*, v. 543.

CLERKS.
1. Clerks in the public offices will not be compelled to serve as jurors. *General Rule*, i. 130, 147.
2. The clerk of this Court for the county of Alexandria, may have an attachment for non-payment of his fees. *Lee* v. *Patterson*, ii. 199.
3. The clerk of this Court is not liable for the honest error of judgment of his deputy, if the deputy was a person of good understanding and correct demeanor, and capable of performing with propriety and correctness the duties of a deputy clerk; and if the defendant has been guilty of no negligence in superintending his deputy in the discharge of the duties of his office. *Patons & Butcher* v. *Lee*, ii. 646.
4. The clerks employed in the offices of the several departments of the government are not liable to militia duty. *Ex parte W. S. Smith*, ii. 693.
5. If a case be set for hearing as to some of the defendants, and, as to them, brought upon the Court's docket, and continued at the rules as to the other defendants, who are absent, and have not answered, the clerk has a right to charge his fees for the continuances at the rules. *Ex parte E. J. Lee*, iv. 197.

COLLECTOR.
1. The collector of city taxes, who was appointed and gave bond in June, 1816, and resigned in October, 1816, was liable, upon that bond, for all collections of taxes made by him after the date of the bond, and before his resignation, although such collection consisted of arrearages of taxes due in former years. *Corporation of Washington* v. *Walker*, ii. 293.
2. If the administrator of a surety in a collector's bond, pay away the assets of his intestate in discharge of the debts of the intestate, before notice of the claim of the United States; such payment is not a *devastavit*. *United States* v. *Rickett's Administrator*, ii. 553.
3. The United States, in an action upon a collector's bond, cannot obtain judgment against the surety for more than the penalty of the bond. *Ibid.*

COMMITMENT.
1. A warrant of commitment should state probable cause, supported by oath or affirmation. *Ex parte Burford*, i. 276.

COMMITMENT, (*continued.*)

2. Upon surrender of a debtor on a *ca. sa.*, the Court will not, without motion, order him to be committed in execution. *Peter* v. *Suter*, i. 311.
3. If a person be arrested on a bench-warrant for treason, the Court will commit him to prison without stating when or where he is to answer for the offence. *United States* v. *Bollman et al.* i. 373.
4. Upon a motion to commit for trial for treason, the party accused may be heard by counsel. *Ibid.*
5. A warrant of commitment must state probable cause, supported by oath or affirmation; must be under seal; and must limit the term of imprisonment. *Ex parte Sprout and Bailey*, i. 424,
6. *Quære*, whether the authority to commit a seaman for deserting his ship, be not limited to a justice of the peace? *Ibid.*
7. Upon an attachment for contempt, the marshal cannot detain the party after the return-day of the attachment, unless by an order of commitment by the Court. *Ex parte Burford*, i. 456.
8. A justice of the peace cannot discharge a prisoner committed for trial for felony. *United States* v. *Faw*, i. 486.
9. A commitment, not stating on its face any offence, is not evidence of a commitment for felony, although written on the back of a warrant of arrest charging a felony, but not referring to it. *United States* v. *Addison Brown*, iv. 333.
10. No person can be detained upon a commitment which does not show sufficient cause upon its face. *Ex parte Thomas Williams*, iv. 343.

COMMON CARRIER.

If the consignee of property, sent by a common carrier, demand and receive it before it reach its ultimate destination, he is liable for the full freight. *Violett* v. *Stettinius*, v. 559.

COMMON SCOLD.

1. An indictment, charging the defendant with being a common slanderer, or common brawler, is not sufficient; it should charge the defendant as a common scold, or common barrator, in technical language, these being the only indictable offences of that class. *United States* v. *Ann Royall*, iii. 618.
2. Upon the trial, on an indictment for being a common scold, particular instances of scolding may be given in evidence. After conviction as a common scold, the Court will order the defendant, if in Court, to give security for her appearance in Court from day to day, to hear the judgment of the Court, and in the mean time to be of good behavior.

The law against a common scold, as being a common nuisance, is not obsolete, although the punishment by "ducking" may be. It is still punishable as a nuisance, at common law, by fine and imprisonment. Anger is not a necessary ingredient in scolding. *Id.* 620.

COMPENSATION.

See AGENT, 1. *United States* v. *Nourse*, iv. 151.

CONFESSION.

1. The jury must believe or reject the whole of the prisoner's confession. *United States* v. *Barlow*, i. 94.
2. A confession upon oath before a magistrate cannot be given in evidence against the prisoner. *United States* v. *Duffy*, i. 164.
3. The admissions of one of several underwriters upon the same policy cannot be given in evidence against another underwriter, nor can the admissions of a committee of the company not authorized by the articles of association to make admissions. *Lambert* v. *Smith*, i. 361.

CONFESSION, (*continued.*)

4. A confession made under the impulse of fear, or promise of favor, is not evidence; but facts discovered in consequence of such confession, are evidence. *United States* v. *Hunter*, i. 317.
5. The confession of a prisoner, taken on oath, cannot be used against him on his trial. *United States* v. *Bascadore*, ii. 30.
6. The prisoner's confession, made under the influence of hope or fear, cannot be given in evidence against him. *United States* v. *Pocklington*, ii. 293; *United States* v. *Negro Charles*, ii. 75.
7. Subsequent confessions, after having confessed under the influence of hope or fear, cannot be given in evidence. *United States* v. *Negro Charles*, ii. 75.
8. Grand jurors may testify as to the confessions made by the prisoner before them on oath, when under examination as a witness against another person. *Ibid.*
9. In treason, the confession of the prisoner that he did the overt act charged, cannot be given in evidence against him on his trial. *United States* v. *Lee*, ii. 104.
10. The making of a promissory note can be proved only by the subscribing witness, if there be one. Evidence of the confession of the maker that he owes part of it, is not sufficient on the money counts. *Turner* v. *Green & Johnson*, ii. 202.
11. Although a confession, made under a promise of favor, is not, of itself, evidence against the prisoner; yet, the fact that the prisoner went to the place where the property was secreted, and identified it, is evidence against him. *United States* v. *Negro Richard*, ii. 439.
12. If a person, arrested for larceny, makes a confession to the officer, as to that larceny, under a promise by the officer to do what he could for him, if he would tell where the stolen goods were; and afterward, before the magistrate, without any new promise, or threat, or question, make a confession of a different larceny, such latter confession is admissible evidence against the party, upon his trial for such latter larceny. *United States* v. *Kurtz et al.* iv. 682.
13. The whole confession must be given in evidence, if any part is given; but the jury have a right to judge for themselves of the truth thereof, or of any part of it. *United States* v. *Negro Ralph Prior*, v. 37.

CONFLICT OF LAWS.

The laws of Virginia, in the county of Alexandria, are to be considered, with respect to the laws of the United States, as common law; that is, not repealed without negative words, or other and repugnant provisions upon the same subject. *Quære?* *Sutton* v. *Mandeville*, i. 115.

CONSIDERATION.

1. The promise of a *feme covert* is void, and her subsequent promise when *sole*, without a new consideration, is also void. *Watson* v. *Dunlap*, ii. 14.
2. A promise in writing, without consideration, is void. *Ibid.*
3. The burden of proof of want of consideration of a written promise, is on the defendant. *Ibid.*
4. The plaintiff cannot give evidence of a consideration different from that laid in the declaration. *Ibid.*
5. A covenant upon an unlawful consideration will not support an action. *Holmead* v. *Maddux*, ii. 161.
6. A note given for a ticket in a prohibited lottery will not maintain an action. *Hawkins* v. *Cox*, ii. 173; *Thompson* v. *Milligan*, ii. 207.
7. A note given for the assignment of an apprentice, is void. *Walker* v. *Johnson*, ii. 203.

CONSIDERATION, (*continued.*)
8. A covenant to convey land, is a good consideration of a note given for the purchase-money; and it is no defence at law that the vendor failed to convey according to his covenant. *Holy et al.* v. *Rhodes*, ii. 245; *Lane* v. *Dyer*, ii. 349.
9. The feeding and training of a race-horse is not an immoral consideration, and will support an assumpsit to pay for the same. *Maddox* v. *Thornton*, ii. 260.
10. If a deed be made for a valuable consideration, it is competent for a person claiming under it to show a money consideration. *Munro* v. *Robertson*, ii. 262.
11. See BARON AND FEME, 3. *Bank of the United States* v. *Lee*, v. 319.
12. A woman who keeps prostitutes for gain cannot recover in an action against them for board and lodging. *Mackbee* v. *Griffith*, ii. 336.
13. A partial failure of consideration is no defence to an action by the payee against the maker of a promissory note. *Varnum* v. *Mauro*, ii. 425; *Boone* v. *Queen*, *Id.* 371.
14. Forbearance, at the request of one partner, to arrest the other partner for a partnership debt, is a good consideration of a promise to pay. *Rice* v. *Barry*, ii. 447.

CONSIGNEE.
1. When bills are drawn upon a consignee on a shipment of tobacco, he has no right to hold up the tobacco after the time of payment of the bills without orders, but should sell to meet the payment of the bills. *Potts* v. *Finlay et al.* i. 514.
2. The master of a vessel, who is also consignee of the cargo, has, thereby, the authority of supercargo during the voyage. *Smedley* v. *Yeaton*, iii. 181.

CONSOLIDATION.
1. The Court will not order actions to be consolidated. *Bank of Alexandria* v. *Young*, i. 458.
2. If the writ be issued against two defendants, and one only be taken on the first writ, and the other be afterward taken on an *alias* or *pluries*, the cause against the defendant first taken will be consolidated with that against the other defendant; although there may have been an intermission of a term between the issuing of the first and second or other writ. *Smith* v. *Woodward & Yerby*, ii. 226.
3. In an action against two defendants, if one be taken and issue be joined, and plea waived and judgment confessed against him after the other has been taken, and before the cause is at issue against him; the first judgment may be set aside for irregularity, and the two causes consolidated, and the issues be made up and set for trial. *Wilson* v. *Hyer et al.* ii. 633.

CONSPIRACY.
1. In an action upon the case for maliciously conspiring to deprive the plaintiffs of their slave, it is necessary for them to prove malice in the defendant; and it is competent for the defendant to show probable cause, and the want of malice. *Lewis et al.* v. *Spalding*, ii. 68.
2. See CHEAT. *United States* v. *Spalding et al.* iv. 616.
3. The time and place of conspiracy must be stated in the indictment. *United States* v. *Soper et al.* iv. 623.

CONSTABLE.
1. A constable may be suspended from office, upon affidavit, without a rule to show cause. *Bowling's case*, i. 39.
2. A constable of the county of Washington, residing in Georgetown, is "a constable of the town of Georgetown and precincts," within the meaning of the by-law concerning hogs. *Holmead* v. *Fox*, i. 138.

CONSTABLE, (*continued.*)

3. An indictment may be sustained against a constable for acting as such without giving bond. *United States* v. *Evans*, i. 149.
4. The constable is not entitled to any fee for returning an execution not served. *United States* v. *Little*, i. 411.
5. Upon a rule on a constable to show cause why he should not be removed from office, "for extortion under color of his office," it is not necessary that there should be any specification of the particular facts relied upon. *Jones* v. *Woodroe & Neale*, i. 455.
6. In a prosecution against a constable for wantonly sacrificing property taken in execution, the jury cannot find him guilty, unless his motive was corrupt. *United States* v. *Bill*, ii. 202.
7. A constable is not justified in breaking into a dwelling-house, by a warrant of a justice of the peace to search for goods clandestinely removed by a tenant to deprive his landlord of his remedy by distress for rent. *Wells* v. *Hubbard*, ii. 292.
8. A constable, in levying a distress for rent in the county of Alexandria, D. C., is not acting in the discharge of his official duty as constable, and can justify himself by those acts only which would have justified the landlord himself if he had been personally distrained. *United States* v. *Elizabeth Williams*, ii. 438.
9. A constable's official bond is not vacated, or rendered void by his temporary removal from office, but covers his official conduct after his reinstatement in office, as well as before the suspension of his functions. *United States* v. *Bill*, ii. 518.
10. The sureties in a constable's bond, are not liable for money collected by him without legal process. *United States* v. *Cranston*, iii. 289.
11. In debt upon a constable's bond, for not conveying to the plaintiff property alleged to have been sold to him by the defendant under a *fieri facias*, the breach is defective in not stating that the execution was levied on the property, and that the lots were the property of the defendant in the execution; and in not describing the property with sufficient certainty; and is bad in averring an alternative breach. *Hazel* v. *Waters*, iii. 420.
12. *Quære*, whether a constable who sells real estate under a *fieri facias*, is bound to give a deed to the purchasers, and whether the return of the officer is traversable? *Ibid.*
13. See ARREST, 2. *United States* v. *Goure*, iv. 488.
14. A constable having a warrant to arrest a man on a charge of forgery, seized and searched his trunk; and finding therein articles which he suspected were stolen, took them into his custody. *Held*, that they were not, thereby in the custody of the law, but might be replevied. *Brent* v. *Beck*, v. 461.

CONTEMPT.

1. It is a contempt of court in a witness to refuse to answer proper questions before the grand jury, for which he may be fined, and required to give security for his good behavior. *United States* v. *Caton*, i. 150.
2. Attachment of contempt for disobeying an injunction. *Munroe* v. *Harkness*, i. 157; *Munroe* v. *Bradley*, i. 158.
3. An indictment for using contemptuous language to a magistrate in the exercise of his office, should set forth the words spoken, and the day and month; and that the magistrate was in the discharge of his official functions. *United States* v. *Beale*, iv. 313.
4. See ATTACHMENT, 10, 11. *Thornton* v. *Davis*, iv. 500.
5. It is a contempt of court, punishable under the Act of Congress of March 2d, 1831, "declaratory of the law concerning contempts of Court," to call another a liar openly in the presence of the Court, while in session,

CONTEMPT, (*continued.*)

and in the hearing of the officers of the court; and an assault and battery committed in the hall of entrance into the court-room, separated from it only by a door without panels and covered with cloth, was either in the presence of the Court, or so near thereto as to obstruct the administration of justice. *United States* v. *Emerson*, iv. 188.

6. See *United States* v. *Devaughan*, iii. 84; *United States* v. *Louisa Carter*, iii. 423.

CONTINUANCE.

1. Attachment for non-payment of the costs of a continuance, will not be granted against a defendant, against whom final judgment in the cause has been rendered. *McGill* v. *Sheehee*, i. 62.
2. If the cause has been standing five terms without issue or rule to plead, the Court will continue it at the motion of the defendant. *Morgan* v. *Voss*, i. 109.
3. The Court will not continue a cause for the plaintiff, because he cannot find out the place of residence of his witness. *Smith* v. *Potts*, i. 123.
4. If a party has had no opportunity to cross-examine a witness whose deposition has been taken under the Act of Congress, the Court will continue the cause. *Dade* v. *Young*, i. 123.
5. If by an amendment the nature of the action be changed, the Court will continue the cause, even at the fifth term. *Schnertzell* v. *Purcell*, i. 246.
6. When there is a rule to employ new counsel, the cause may be continued after the fifth term, notwithstanding the Maryland Acts, November, 1787, c. 9, and 1721, c. 14. *Fenwick* v. *Brent*, i. 280.
7. Counter affidavits cannot be read on a motion for continuance of the cause. *Manning* v. *Jamesson et al.* i. 285.
8. Supplemental affidavits will not be received upon a motion to continue the cause. *Norwood* v. *Sutton*, i. 327.
9. The defendant is not, of course, entitled to a continuance of the cause, upon the death of the plaintiff. *Alexander* v. *Patton*, i. 338.
10. When depositions have been taken by one party without notice to the other, the cause may be continued. *Strass* v. *Marine Ins. Co.* i. 343.
11. If the blanks in the declaration have been filled up at the trial term, and the defendant pleads, with the knowledge that they have been so filled up, it is not a ground for the continuance of the cause. *Lambert* v. *Smith*, i. 347.
12. If the writ of inquiry be set aside at the trial term, the plaintiff is entitled to a continuance of the cause at the defendant's costs. *Beck* v. *Jones*, i. 347.
13. The costs of a continuance await the event of the cause, unless there be a special order to the contrary. An attachment will not lie for the non-payment of the costs of a continuance until after a rule to show cause; nor unless there has been a personal service of the order of the Court to pay the costs; nor unless the bill of costs state the particular items. *Dyson* v. *White*, i. 359.
14. An affidavit is not necessary to continue a negro petition at the first term. *Negro Ben* v. *Scott*, i. 365.
15. A replication after the rule-day, entitles the defendant to a continuance. *Veatch* v. *Harbaugh*, i. 402.
16. The Court will not continue the cause for the defendant, on the ground that his receipts are mislaid, unless the affidavit shall state the amounts and dates of the receipts, so that the plaintiff may admit or deny them; nor unless it shall state circumstances by which the Court can judge whether reasonable diligence has been used in searching for them. *Hyde* v. *Liverse*, i. 408.

CONTINUANCE, (*continued.*)

17. If the principal come in and give special bail, and set aside the plea pleaded by the appearance bail, the plaintiff is entitled to a continuance of the cause. *Wise* v. *Groverman*, i. 418.
18. The Court will not continue a suit at law at the motion of the defendant, on the ground that the plaintiff has not answered a bill for discovery, if the bill seek relief also. *Bennet* v. *Wilson*, i. 446.
19. The Court will not, on motion of the defendant, continue a cause because the costs of a *non-pros.* have not been paid. *Wheaton* v. *Love*, i. 451.
20. The Court will not continue a prosecution for larceny, on the ground of the absence of a witness who could testify that he heard another man confess that he had stolen the goods. *United States* v. *Toms*, i. 607.
21. If, upon the motion for the continuance of a cause upon affidavit that a material witness is absent, the opposite party, to prevent the continuance, admits that the absent witness, if present, would testify as stated in the affidavit, he is not thereby precluded from offering evidence, at the trial, to disprove or explain away the force of the testimony which he had admitted that the witness would give. *Bestor* v. *Sardo*, ii. 260.
22. If notice of a motion for an order to produce books and papers, at the trial, be not given until the cause is called for trial at the last calling of the docket, the Court will continue the cause until the next term. *Bank of the United States* v. *Kurtz*, ii. 342.
23. In an affidavit for the continuance of a cause, on account of the absence of a witness, it is not necessary to state the particular circumstances of diligence used by the party to obtain the testimony of such witness. They may be proved *ore tenus*. *Higgs* v. *Heugh*, iii. 142.
24. When a juror is withdrawn upon the motion of the plaintiff, and by the consent of the defendant who elects a continuance of the cause, he is not entitled to costs also. *Macomber* v. *Clarke*, iii. 347.
25. At any time before the fifth term after the appearance term, the plaintiff may obtain a continuance of the cause, upon affidavit that he has recently learned, from his counsel, that the documents upon which he relied, are not good evidence for him, and that he wants the testimony of persons beyond sea, although a day, by consent of the parties, shall have been assigned for the trial. *Fowle* v. *Bowie*, iii. 362.
26. If a deposition be taken without reasonable notice, the opposite party may obtain a continuance of the cause. *Barrell* v. *Simonton*, iii. 681.

CONTRACT.

1. A public agent, contracting for public use, is not personally liable, although the contract be under his seal. *Hodgson* v. *Dexter*, i. 109.
2. A casualty happening against the will, and without the negligence or other default of the party, is, as to him, an inevitable casualty. *Ibid.*
3. If there be a special agreement that the plaintiff's work shall be measured and valued in a certain way, the defendant will not be permitted to show that it was not worth as much as the value thus ascertained. *Evans* v. *Blakeney*, i. 126.
4. If the measurement and valuation were reduced to writing, parol evidence of the contents of that writing cannot be given, unless the writing be lost or destroyed. *Ibid.*
5. If the plaintiff contract to do certain work, and it be done by the plaintiff and another, the plaintiff may recover for the whole in his own name. *Ibid.*
6. Under a contract to deliver rations of beef for a year, the plaintiff cannot recover for rations delivered for part of a year only, unless prevented by the plaintiff from completing the contract. *Krouse* v *Deblois*, i. 156.

CONTRACT, (*continued.*)
7. If there be a special contract, the plaintiff cannot recover on a general count. *Rambler* v. *Choat*, i. 167.
8. A general *indebitatus assumpsit* for goods sold and delivered, is not supported by evidence of a sale and delivery of goods under a special contract to sell and deliver specified goods at a certain price. *Talbot* v. *Selby*, i. 181.
9. An averment that I. L., "for a certain price," agreed to serve the plaintiff, is supported by evidence that I. L., in consideration of eight guineas paid by the plaintiff to a third person, agreed to serve the plaintiff. *Milburne* v. *Byrne*, i. 239.
10. If the plaintiff has done part of the work contracted for by an agreement under seal, and is prevented by the plaintiff from finishing the job, he may recover the value of the work which he has done, in an action of assumpsit. *Preston* v. *Young*, i. 357.
11. *Indebitatus assumpsit* will lie for money due upon a special contract executed on the part of the plaintiff. *Hyde* v. *Liverse*, i. 408.
12. The plaintiff may recover upon a contract to do work in a workmanlike manner, although part of the work was not done in a workmanlike manner. *Voss* v. *Varden*, i. 410.
13. A bill of parcels receipted by the defendant is not *per se* evidence of an unexecuted contract to deliver the goods, but is *prima facie* evidence of a contract executed. *Richardson* v. *Peyton*, i. 418.
14. If a person who is not a party to a promissory note, indorse his name upon it in blank, with intent to give it credit, the plaintiff may write over it an engagement to pay it in case of the insolvency of the maker. *Offutt* v. *Hall*, i. 504.
15. The law of the place where the goods are to be delivered according to the contract, determines the merchantable quality of the goods. *Ladd* v. *Dulaney*, i. 583.
16. When a contract has been executed, *indebitatus assumpsit* will lie for the amount due upon it. *Maupin* v. *Pic*, ii. 18.
17. If the vendee of land bring a bill to vacate the contract because the title has been adjudged defective, the defendant may resist a decree, by showing himself to be now ready to make a good title; if time be not of the essence of the contract, although a former bill by the vendor for a specific performance had been dismissed on account of the defect of title. *Dunlop & Co.* v. *Hepburn*, ii. 86.
18. If the defendant positively refuse to deliver corn according to contract, such refusal dispenses with the necessity of demand and notice on the part of the plaintiff, and of proof of the averment that he was ready at the landing to receive the corn. *Somers* v. *Tayloe*, ii. 138.
19. A third person, who, at the request of the contractor, executes the contract, cannot maintain an action against the contractor, upon that contract. *Jones* v. *Smoot*, ii. 207.
20. A general usage among ship-owners and underwriters in relation to the settlement of average loss, if known to the parties, becomes part of the contract, and binds them. *Sanderson* v. *Columbia Ins. Co.* ii. 318.
21. No executory contract between a master and his slave, can be enforced either at law or in equity. *Brown* v. *Wingard*, ii. 300.
22. See CONSIDERATION, 7. *Lane* v. *Dyer*, ii. 349.
23. If a man contract to do a certain work at a certain price, and quit it before it be finished, he cannot recover upon *quantum meruit* the value of his labor. *Lewis* v. *Esther*, ii. 423.
24. See ASSUMPSIT, 5. *Powling* v. *Varnum*, ii. 423.
25. See BILLS AND NOTES, 72. *Stone* v. *Mason*, ii. 431.
26. See BARON AND FEME, 1. *Mechanics Bank* v. *Taylor*, ii. 507.

CONTRACT, (*continued.*)

27. If goods are shipped by a merchant in England to a mercantile house in this country according to their order, they cannot refuse to receive them here; but by receiving them are not bound to pay the invoice price. The plaintiffs may recover as much as the goods were worth at the time and place of shipment, if the defendants object to the invoice price in a reasonable time. *Fenton* v. *Braden*, ii. 550.
28. The Court may decree the specific execution of a contract to give collateral security. *Robinson* v. *Cathcart*, ii. 590.
29. A clause in a contract, stating that "in further confirmation of the said agreement, the parties bind themselves each to the other, in the penal sum of one thousand dollars," is not to be considered as liquidated damages for the breach of the agreement, but as a penalty superadded. *Ibid.*
30. If a written contract be not lost nor destroyed, but only "mislaid," secondary evidence will not be received, although the party make oath that "he has searched for it among his papers repeatedly and cannot find it." *Riggs* v. *Tayloe*, ii. 687.
31. If the contract be to purchase the defendant's bank stock at par, with so much of the next dividend as was then supposed to have been earned, estimated at three per cent. and it turns out that nothing was earned, there is an implied assumpsit on the part of the defendant to refund the three per cent. And so much of the contract as relates to the advance of three per cent. is executory, even after the purchase-money has been paid. *Ibid.*
32. The value of extra work done upon houses built by contract in writing, cannot be recovered of the owner unless there was a separate contract between the parties that such extra work should be done by the builder, and paid for by the owner; unless the owner, while the houses were building, requested the builder to do the extra work, knowing that it was not comprehended in the written contract, and that the cost of the houses would be thereby increased. The mere circumstance that the owner knew that the extra work was doing and did not object to it, does not raise a contract on his part to pay for it; but is evidence competent to be given to the jury, tending to prove that there was an agreement that the extra work should be paid for by the owner. *Belt* v. *Cook*, iii. 666.
33. A person who becomes a member of a corporation is bound to know the obligations which he thereby incurs. Those obligations are matters of law resulting from the construction of the charter. If both parties were equally mistaken as to that construction, it is no ground in equity or law for setting aside the obligation of the contract. *Chesapeake and Ohio Canal Company* v. *Dulany*, iv. 85.
34. Sales at public auction are not within the statute of frauds. *Arden* v. *Brown*, iv. 121.
35. The statute of enrolment of conveyances, 1766, c. 14, relates to estates at law only, not to the transfer of equitable interests. A contract to sell land, or an equitable interest in land, is not void for want of acknowledgment and enrolment. *Ibid.*
36. A parol agreement among the purchasers at a public sale is void under the statute of frauds. *Ibid.*
37. It is competent for the defendant in an action upon a special contract in writing not under seal, to prove a parol condition not stated in the written contract. *Corcoran* v. *Dougherty*, iv. 205.
38. If there are mutual promises, not dependent on each other, the omission to state, in the declaration, performance of that made by the plaintiff, is cured by the verdict. *Ibid.*
39. The plaintiff, who has completed the work according to his sealed contract, may, in assumpsit, recover the balance due to him, although he had cove-

CONTRACT, (*continued.*)
nanted to receive corporation stock in payment, and had not demanded payment in stock before bringing his action. *Hallihan* v. *Corporation of Washington*, iv. 304.
40. See CHESAPEAKE AND OHIO CANAL COMPANY, 11. *Miller* v. *Frink*, iv. 451.
41. *Id.* 13. *Carothers* v. *Chesapeake and Ohio Canal Company*, iv. 698.
42. See BANK, 5. *Guttschlick* v. *Bank of the Metropolis*, v. 435.
43. The plaintiff cannot recover in an action of *indebitatus assumpsit* for work and labor done under a sealed contract, unless the whole work has been done according to the contract; nor in an action against three defendants upon a contract under the seal of one defendant only; unless the contract was made for the benefit of all the defendants, and the work performed according to the contract. *Fresh* v. *Gilson*, v. 533.
44. See BAIL, 10. *Davis* v. *Garland*, v. 570.
45. If a contract be absolute to deliver flour on or before a particular day, the vendor will not be excused by an obstruction to the navigation on the canal. It is not material whether defendant had or had not the flour on hand at the time of the contract. *Dodge* v. *Van Lear*, v. 278.

CONTRIBUTION.
1. If one of three joint defendants pay the whole debt upon a joint execution for a partnership debt, he cannot at law recover against the other partners, their respective proportions of the whole debt which he has thus paid. *Riggs* v. *Stewart*, ii. 171.
2. The vessel and the cargo in the hold are not liable to contribution for the deck load thrown overboard for the general safety. *Triplet & Neale* v. *Van Name et al.* ii. 332.
3. A bequest of shares of stock in a bank, &c., with power to the executor to change the investment, is not a specific legacy, but is liable to contribution if the assets are not sufficient to pay all the pecuniary legacies. *Ladd* v. *Ladd*, ii. 505.

COPY.
1. The record copies in the land record books of the Circuit Court of the District of Columbia, may be read in evidence without proving the execution or loss of the original deeds. *Bank of the United States* v. *Benning*, iv. 81.
2. An absolute deed of goods and chattels, need not, under the law of Virginia, be recorded, and a record-copy is not evidence. *Negro Kitty Lemon* v. *E. Bacon*, iv. 466.

COPYRIGHT.
1. On the trial of an issue from chancery to try the title to a copyright, the bill and answer cannot be read to the jury unless it be so ordered by the Court of Chancery when the issue is ordered. *King* v. *Force*, ii. 208.
2. The omission to have the date of depositing the title of the map engraved thereon, is fatal to the plaintiff's title. *Ibid.*

CORONER.
1. The marshal is entitled to a fee of five dollars and fifty cents for summoning and impanelling a coroner's inquest in the county of Alexandria. *Brent* v. *Justices of the Peace*, i. 434.
2. Neither at common law, nor by the statute of Virginia, is the coroner bound to put in writing the effect of the evidence given upon an inquisition, unless the offence be found to be murder or manslaughter. *United States* v. *Faw*, i. 456.

CORPORATION.

1. In an action upon the case against a corporation aggregate, for injury done by their agent, it is not necessary to prove that the agent had authority under the corporate seal, nor under an order entered upon the books of the corporation. *Hooe et al.* v. *Corporation of Alexandria*, i. 90.
2. *Indebitatus assumpsit* will lie against a corporation aggregate upon an account stated by their treasurer, without examining him as a witness. *Davis* v. *Georgetown Bridge Co.* i. 147.
3. Citizens of Alexandria are not competent jurors in an action of debt for the penalty of a by-law of the corporation; but are competent witnesses. *Common Council of Alexandria* v. *Brockett*, i. 505.
4. The statute of usury is as applicable to corporations as to individuals. *Bank of Alexandria* v. *Mandeville*, i. 552.
5. In an action brought to the use of a county, inhabitants of the county are competent witnesses for the plaintiff. *Governor of Virginia* v. *Evans et. al.* i. 581.
6. See ACTION, 5. *Pritchard* v. *Corporation of Georgetown*, ii. 191.
7. An attachment, under the Maryland Act, 1795, c. 56, against the property of a corporation aggregate, will be dissolved by its appearance without bail. *Nicholl et al.* v. *Savannah Steamship Co.* ii. 211.
8. A corporation aggregate, whose president and treasurer reside in this district, cannot be compelled to give security for costs as being non-resident plaintiffs. *Potomac Company* v. *Gilman*, ii. 248.
9. *Quære*, whether the misnomer of a body corporate must be pleaded in abatement? *Central Bank* v. *Tayloe*, ii. 427.
10. The commissioner's book of subscriptions is *prima facie* evidence that the subscriptions are genuine, or made by persons duly authorized; and the fact that the defendant was appointed, by the stockholders, one of the managers, and had acted as such, is *prima facie* evidence of an admission on his part, of the existence of the corporation. *Rockville and Washington Turnpike Co.* v. *Van Ness*, ii. 449.
11. Directors *de facto* of a corporate body are to be considered, *primâ facie*, as directors *de jure*. It is not incumbent upon the plaintiff to prove that the managers were elected by a majority of the votes. *Ibid.*
12. It is not competent for any stockholder to deny the existence of the corporation. *Ibid.*
13. It is not competent for a real original subscriber to the company, who was one of the commissioners named in the act of incorporation for receiving subscriptions, and who acted as such, and was afterward, at a meeting of the stockholders, elected as one of the managers, and acted as such, to object, in an action by the company against him for not paying the instalments called for, that a sufficient number of shares had not been subscribed to justify such election. *Ibid.*
14. The Rockville and Washington Turnpike Company may maintain an action against a stockholder, for the amount of his subscription, and are not obliged to resort to a sale of his shares. *Rockville and Washington Turnpike Company* v. *Maxwell*, ii. 451.
15. The pamphlet of the laws of Maryland published by the authority of the legislature of that State, and proved by a witness to be the book which is admitted as evidence of the laws of Maryland in the courts of Maryland, is admissible evidence of the act of incorporation of "The President, Managers, and Company of the Rockville and Washington Turnpike Road." *Rockville and Washington Turnpike Company* v. *Andrews*, ii. 451.
16. See AUCTIONEER, 1. *Fowle* v. *Corporation of Alexandria*, iii. 70.
17. A corporation aggregate, having, or supposed to have, a corporate fund, is liable, in an action at common law, for negligence of its duty. *Ibid.*
18. The inhabitants of Alexandria, D. C., are no part of the corporation. A

CORPORATION, (*continued.*)

judgment against the corporation cannot be levied on any inhabitant who is not a member of the common council. *Ibid.*

19. The "Common Council of Alexandria," is an entirely new corporation erected by the Act of Congress in 1804, and derives all its powers from that act. By that act, the new corporation is neither authorized to grant licenses to auctioneers nor to restrain them from exercising that business without license. The old corporation erected by the Virginia Statute of 1779, by the name of "the Mayor and Commonalty of the town of Alexandria" was, by its own consent, destroyed by the repeal of that statute, by the Act of Congress of 1804, erecting the new corporation.

The Virginia Act of 1796, "concerning corporations," was applicable only to corporations then existing; and created no duty or obligation upon any corporation subsequently erected. *Ibid.*

20. *Quære*, whether the answer of a corporation aggregate, under its seal, not excepted to, and responsive to the allegations of the bill, is such evidence for the defendant that the Court cannot decree against it, unless contradicted by one witness, corroborated by others, or by the circumstances of the case. *Garey* v. *Union Bank*, iii. 233.

21. The proceedings of a corporation aggregate may be given in evidence against a party not a member of the corporation, although there should be no evidence that such notice of the meeting, as the charter requires, had been given. *Bradley* v. *McKee*, v. 298.

22. See CONTRACT, 1. *Chesapeake and Ohio Canal Company* v. *Delany*, iv. 85.

23. See BY-LAWS, 1. *Corporation of Georgetown* v. *Smith*, iv. 91.

CORPORATION OF ALEXANDRIA.

1. The Corporation of Alexandria is authorized to tax the Farmers Bank of Alexandria, and to collect the tax by distress and sale of the goods of the Bank. *Farmers Bank* v. *Fox*, iv. 330.

2. See CORPORATION, 3. *Common Council of Alexandria* v. *Brockett*, i. 505.

3. See CORPORATION, 4. *Fowle* v. *Corporation of Alexandria*, iii. 70.

4. The Corporation of Alexandria may collect taxes by distress and sale, and raise taxes for purposes and works out of the town. *Beale* v. *Burchell*, v. 310.

5. The Court will not instruct the jury that the plaintiff has a right to recover, unless all the facts necessary to entitle the plaintiff to recover, are stated in the prayer. *Ibid.*

CORPORATION OF GEORGETOWN.

1. The Corporation of Georgetown, D. C., in the year 1826, had a right to sell real property in that town for corporation taxes due thereon in the years 1819, 1820, 1821 and 1822, as well as for taxes due thereon in the years 1813 to 1819 inclusive. *Corporation of Georgetown* v. *Bank of the United States*, iv. 176.

2. The power to regulate the streets, given to the Corporation of Georgetown, by the Act of 1805, applies only to streets opened or extended by virtue of that act. The inquest must be taken before a magistrate or officer. The justice must certify that he summoned the jurors and that they were sworn. The jurors must certify that they made the inquest, and the party to be affected by the inquest, must be notified. A subsequent inquest is no bar to the plaintiff's special action upon the case for a cause of action which accrued before the inquisition. *Wright* v. *Corporation of Georgetown*, iv. 534.

3. See CERTIORARI, 3. *Nicholls* v. *Corporation of Georgetown*, iv. 576.

4. The Corporation of Georgetown may rent fish-wharves. *Corporation of Georgetown* v. *Chew*, v. 508.

CORPORATION OF WASHINGTON.

1. A writ of *mandamus* is the proper process to compel the Corporation of Washington to pay to the County Treasurer one half of the expense of erecting a bridge over Rock Creek, according to the eleventh section of the Act of Congress of the 1st of July, 1812. *United States* v. *Corporation of Washington*, ii. 174.
2. The Levy Court is authorized by the act to ascertain conclusively the sum required for the rebuilding of the bridge. *Ibid.*
3. See COLLECTOR, 1. *Corporation of Washington* v. *Walker*, ii. 293.
4. See BY-LAW, 10. *White* v. *Corporation of Washington*, ii. 337.
5. The election of a mayor of the city of Washington must be held in each ward by three commissioners of election. If the three are present, the acts of the majority are, in law, the acts of the three. The return by two is sufficient if the three were present. The return of the commissioners is not conclusive, but is *prima facie* evidence that the votes were good, and throws the burden of proof on the relator to show that bad votes were given for the incumbent. If the election he held by two commissioners only, in any of the wards, the whole election is void. A certificate of the result of the election must be returned by the commissioners to the boards of aldermen, and common council. Parol evidence is competent to show that all the commissioners were present. *United States* v. *Carbery*, ii. 358.
6. The Court cannot grant an injunction to prevent the execution of the Act of Congress of the 7th of May, 1822, authorizing the Corporation of Washington to drain the low grounds, &c. By that act, the power to sell the lots is absolutely vested in the corporation; and the Court has only authority to decide what proportion, if any, of the money arising from the sale, the complainants may be entitled to. The Court has no authority under the act to require the corporation to give security for the payment of a moiety of the proceeds of sale to the complainants. *Van Ness and Wife* v. *United States*, ii. 376.
7. The Corporation of Washington, under the power given by their charter to authorize the drawing of lotteries, sold to Gillespie, for $10,000, a right to draw a certain lottery. Held, that a person who bought a ticket of Gillespie, could not recover from the corporation the prize drawn against that ticket. *Clark* v. *Corporation of Washington*, ii. 502.
8. Under the by-law of the Corporation of Washington of August 16th, 1809, a person who suffers and permits a faro-table to be set up and kept in his house, is liable to a separate prosecution for every day he shall so have suffered and permitted it to be so set up and kept. *Corporation of Washington* v. *Strother*, ii. 542.
9. The holders of tickets in the Washington lottery had no right to sue the managers, upon the bond given by them to the Corporation of Washington, without the leave of the corporation; nor to sue the contractor for the lottery, upon his bond given to the managers, without their consent. *Corporation of Washington* v. *Young*, ii. 632.
10. See BY-LAW, 15. *Botelor* v. *Corporation of Washington*, ii. 676.
11. The clause in the charter of Washington which gives power to the corporation "to prescribe the terms and conditions upon which free negroes and mulattoes may reside in the city," is applicable only to those persons of color who come to reside in the city after the promulgation of such terms and conditions. *Billy Costin* v. *Corporation of Washington*, ii. 254.
12. The Corporation of Washington is not liable to the holder of a sub-ticket, or part of a ticket, for any part of the prize drawn by it. It is only liable to the holder of the whole ticket. *Shankland* v. *Corporation of Washington*, iii. 328.
13. A *mandamus* will not lie to the mayor, board of aldermen and board of common council of the city of Washington to compel them to make such

CORPORATION OF WASHINGTON, (*continued.*)
regulations as they may deem proper, prescribing the manner of erecting private wharves within the limits of the city. *Kennedy* v. *Corporation of Washington*, iii. 595.
14. The managers of "the lottery for building Lancastrian school-houses," &c., had no authority to sell quarters of tickets, so as to multiply causes of action against the corporation. *McCue* v. *Corporation of Washington*, iii. 639.
15. The holder of a prize-ticket cannot, without the consent of the corporation, maintain an action against the managers upon their bond to the corporation, who may order the suit to be dismissed. *Ibid.*
16. See By-Law, 1. *Corporation of Washington* v. *Townsend*, iii. 653.
17. *Id.* 2. *Dolly Ann Patten* v. *Corporation of Washington*, iii. 654.
18. *Id.* 3. *United States* v. *Holly*, iii. 656.
19. See Commitment, 2. *Ex parte Thomas Williams*, iv. 343.
20. See By-Law, 6, 7, 8, 9. *Ibid.*
21. See Appeal, 6, 7. *Corporation of Washington* v. *Eaton*, iv. 352.
22. See By-Law, 18 to 25. *Ibid.*
23. The power given to the Corporation of Washington, by its charter of 1820, "to provide for licensing, taxing, and regulating," "vendors of lottery tickets," and the power given by the same section of the same charter to "restrain or prohibit" lotteries, and the by-laws of the 4th of January, 1827, and 12th of July, 1831, seem to have repealed the second section of the Act of Maryland of 1792, c. 58, so far as it was in force in the city of Washington. *United States* v. *Gorman*, iv. 574.
24. See By-Law, 9 to 13. *Ex parte Julia Reed*, iv. 582.
25. See Alderman. *Hall* v. *Corporation of Washington*, iv. 722.
26. See By-Law, 14, 15, 16, 17. *Ibid.*
27. The Corporation of Washington has no power to prohibit free colored persons from selling perfumery. *Carey* v. *Corporation of Washington*, v. 13.
28. The Corporation of Washington has power to require the registering of slaves brought in to hire, or to reside in the city, and to require an affidavit, &c. *Hill* v. *Corporation of Washington*, v. 114.
29. A deed from the Corporation of Washington upon a tax-sale, is void unless the surplus of the proceeds of the sale, after deducting the taxes and expenses was paid to the register of the corporation, or other person authorized by law to receive the same, with ten per cent. per annum as interest thereon, computed from the expiration of two years from the day of sale until the actual payment of such surplus and the receiving of the deed from the corporation. *Rodbird* v. *Rodbird*, v. 125.
30. If, at the time of a tax-sale of a lot in Washington there was personal property thereon of sufficient value to pay the taxes, the sale is null and void. *Ibid.*
31. The Corporation of Washington has no right to require the keeper of a livery-stable to take and pay for a license to keep the same, but if it be taken and paid for and enjoyed, the money paid for it cannot be recovered back.
Semble. That money paid under ignorance of the law, cannot be recovered. *Corporation of Washington* v. *Barber*, v. 157.
32. See By-Law, 4. *Corporation of Washington* v. *Lasky*, v. 381.
33. The Corporation of Washington has power to prohibit the granting of tavern licenses to colored persons. *Harriet Johnson* v. *Corporation of Washington*, v. 434.
34. The Corporation of Washington under its authority to prevent nuisances, may prohibit the keeping of a dog in the city without a license, and may require money to be paid for the license. *Corporation of Washington* v. *Lynch*, v. 498.
35. A warrant is too vague and uncertain which charges that the defendant

CORPORATION OF WASHINGTON, (*continued.*)

"did on or about the 20th of July inst. own, harbor, or keep a female of the dog kind in Washington city, in the county aforesaid, without having a license therefor, contrary to the act or acts of the mayor, &c., on that subject made and provided." *Ibid.*

36. See BY-LAW, 1. *Corporation of Washington* v. *Casanave*, v. 500.
37. See BY-LAW, 2. *Jennings* v. *Corporation of Washington*, v. 512.
38. Infants, whose property has been sold for taxes, have a right to redeem at any time within one year after they have arrived at full age. *Mockbee* v. *Upperman*, v. 535.
39. It is a condition annexed to the title of every house-lot in the city of Washington, that when the proprietor builds a partition-wall between himself and his neighbor, he shall lay the foundation equally upon the land of both; and that any person who shall afterward use the partition-wall, or any part of it, shall reimburse to the first builder a moiety of the charge of such part as he shall use. *Miller* v. *Elliot*, v. 543.
40. See BY-LAW, 3. *Nichols* v. *Burch*, v. 553.
41. The Corporation of Washington has power, under its charter, "to provide for licensing, taxing, and regulating" "venders of lottery tickets," although the tax may be so high as to amount, in effect, to a prohibition; and to require the applicant for a license to deposit the license-money in bank before the issuing of the license. *France* v. *Corporation of Washington*, v. 667.

COSTS.

1. Security for costs may be given at any time before judgment upon the rule. *Reverez* v. *Camellos*, i. 50.
2. Attachment for non-payment of the costs of a continuance, will not be granted against a defendant, against whom final judgment in the cause has been rendered. *McGill* v. *Sheehee*, i. 62.
3. The statute of Glocester in relation to costs, is in force in Maryland; but the statute of 21 Jac. c. 16, is not. *Forrest* v. *Hanson*, i. 63.
4. Full costs are allowed upon a verdict of one cent damages, in an action upon the case for damages occasioned by raising the level of the street. *Hooe* v. *The Mayor and Commonalty of Alexandria*, i. 98.
5. Where two become bail jointly and severally, and two writs of *scire facias* are issued, and one of the bail surrenders the principal, he must pay the costs of both writs. *Pennington* v. *Thornton*, i. 101.
6. When a cause is continued at the costs of a party, no execution can issue for them. The remedy is attachment of contempt. *Fenwick* v. *Voss*, i. 106.
7. A rule on the plaintiff to give security for costs, cannot be discharged by security given in the clerk's office. It must be done in open court. *Offutt* v. *Parrott*, i. 139.
8. Upon a judgment on motion upon a replevy-bond for rent, the plaintiff is entitled to costs of the motion. *Cooke* v. *Myers*, i. 166.
9. The defendant may require security for costs from a plaintiff who has removed from the district since the commencement of the action. *McCutchen* v. *Hilleary*, i. 173.
10. Full costs will be given in covenant upon one cent damages. *Woodrow* v. *Coleman*, i. 199.
11. The Court will not, at a subsequent term, reinstate a cause which has been *non-pross'd* for want of security for costs. *Lindsay* v. *Twining*, i. 206.
12. If a plaintiff has not a domicil in the district, he may be ruled to give security for costs. *Duane* v. *Rind*, i. 281.
13. An insolvent debtor will be discharged from arrest for costs accruing partly before, and partly after his discharge under the insolvent act. *Tenny* v. *Densley*, i. 314.

COSTS, (*continued.*)
14. The defendant may, at the trial court in Alexandria, give notice to a non-resident plaintiff, that security for costs will be required, and the cause will be continued if the plaintiff is not ready to give the security. *Thomas* v. *Woodhouse*, i. 341.
15. If the only resident member of a firm who are plaintiffs, dies pending the suit, the defendant may demand security for costs against the surviving plaintiffs, and the Court will continue the cause to give the defendant an opportunity to lay the rule and give sixty days' notice. *Lambert* v. *Smith*, i. 347.
16. A resident of Alexandria, suing in Washington, must give security for costs. *Lovering* v. *Heard*, i. 349.
17. The law of Maryland respecting security for fees and costs, does not apply to suits in equity. *Ray* v. *Law*, i. 349.
18. The costs of a continuance await the event of the cause, unless there be a special order to the contrary. An attachment will not lie for the non-payment of the costs of a continuance, until after a rule to show cause; nor unless there has been a personal service of the order of the Court to pay the costs; nor unless the bill of costs state the particular items. *Dyson* v. *White*, i. 359.
19. A rule having been laid for security for fees, is not of itself a sufficient ground to lay a rule for security for costs. *Brohawn* v. *Van Ness*, i. 366.
20. A material amendment of a bill after answer, must be upon payment of all costs, including the solicitor's fee. *Wallace* v. *Taylor et al.* i. 393.
21. Costs on appeal from a justice of the peace, are within the discretion of the Court, if the judgment be affirmed in part. *Mead* v. *Scott*, i. 401.
22. When leave is given to amend on payment of costs, the payment is not a condition precedent unless so specially expressed in the order. *Butts* v. *Chapman*, i. 570; *Wigfield* v. *Dyer*, *Id.* 403.
23. The Court will not, on motion of the defendants, continue a cause because the costs of a *non-pros.* have not been paid. *Wheaton* v. *Love*, i. 451.
24. The Court will not permit the statute of limitations to be pleaded to an action of trespass for *mesne* profits, after the rule-day, but upon payment of all antecedent costs, and a continuance of the cause. *Marsteller* v. *Mc Clean*, i. 550.
25. The fees of a magistrate in another State for taking a deposition under the Act of Congress may be taxed in the bill of costs in Virginia. *Fry* v. *Yeaton*, i. 550.
26. If the plaintiffs dismiss their bill because they are not competent to sue as executors in the District of Columbia, a lawyer's fee may be taxed against them. *Patterson's Executor* v. *Ball*, i. 571.
27. The prosecutor must give security for costs in Alexandria. *United States* v. *Dulany*, i. 571.
28. If a witness be surety for costs, the Court will permit other security to be substituted, so as to remove the interest of the witness. *Governor of Virginia* v. *Evans et al.* i. 581.
29. Costs are not given upon reversal in the Supreme Court of the United States. *Conway* v. *Alexander*, ii. 57.
30. If a non-resident plaintiff, who has been ruled to give security for costs, comes to reside with his family in the county of Washington, the rule will, on motion, be discharged. *Nicholls* v. *Johns*, ii. 66.
31. Assumpsit will not lie for the costs of appeal, against the person for whose use the appeal was prosecuted, and for whose use it was entered upon the record of the court of appeals; and a transcript of the record is not admissible evidence to support the action. *Williams* v. *Hopkins*, ii. 98.
32. If the plaintiff reside out of the district, and the person, for whose use the

COSTS, (*continued.*)
suit is entered upon the docket, remove from the district, the Court will, on motion, order the plaintiff to give security for costs. *Roberts* v. *Reintzel*, ii. 235.
33. The amount of the costs of a suit in New York, may be proved by parol. *Woodward* v. *Hall*, ii. 235.
34. See CORPORATION, 3. *Potomac Co.* v. *Gilman*, ii. 243.
35. The Court will, on affidavit, reinstate a cause *non-pross'd* on a rule for security for costs laid on the plaintiff, who had no attorney in court; his attorney having died, and no rule served on the plaintiff to employ new counsel. *Cook* v. *Beall*, ii. 264.
36. Costs do not accrue upon levying a distress for rent, unless the goods are sold. *Wright* v. *Waters*, ii. 342.
37. Costs must share the fate of the principal debt. *Emerson* v. *Beale*, ii. 349.
38. A debtor, whose person is discharged under the Insolvent Act of the District of Columbia as to the debt, is not liable to a *ca. sa.* for costs, on a judgment confessed for costs after his discharge, in an action pending at the time of his discharge. *Ibid.*
39. See BILLS AND NOTES, 65. *Ott* v. *Jones*, ii. 351.
40. After the term in which a judgment has been rendered and the costs taxed, the Court will not open the judgment, to allow the cost of taking a deposition in New York. *Blagrove* v. *Ringgold*, ii. 407.
41. The attendance of only three witnesses to any one fact will be allowed to be taxed against the opposite party, unless the Court shall be satisfied by affidavit that the party who summoned them had good reason to believe that their testimony would be necessary to support the issue, or issues on his part. *Bussard* v. *Catalino*, ii. 421.
42. Upon a petition for freedom, if the defendant will not give security that the petitioners shall be forthcoming at the trial; and if the marshal be ordered by the Court to take the petitioners into his possession for safe-keeping until such security be given, and if a judgment shall be rendered against the defendant, the marshal's fees for keeping them shall be taxed in the bill of costs against the defendant. *Negro Rebecca* v. *Pumphrey*, ii. 514.
43. If the defendant has obtained a rule on the plaintiff to give security for costs, the Court, at a subsequent term, will presume that the fact of non-residence of the plaintiff was sufficiently proved or admitted; the burden of proof of residence is then on the plaintiff. *Furlong* v. *Coleman*, iii. 178.
44. An insolvent debtor who has been discharged under the Insolvent Act, is not liable for the costs of a suit pending at the time of his discharge. *Law* v. *Scott*, iii. 295.
45. The surety for fees and costs is not liable to attachment for not paying the daily compensation to the plaintiff's witnesses. *Hyer* v. *Smith*, iii. 376.
46. A notice, given at the trial term in Alexandria, that security for costs will be required, is no ground for postponing the trial. *Bennett* v. *Bennett*, iii. 647.
47. If the plaintiffs' surety for costs, in *scire facias*, die pending the suit, the Court, on motion, will require new security, although the administrator of the former surety may have assets. *Duvall* v. *Wright*, iv. 169.
48. The person for whose use the suit is entered of record, although liable to the defendant for his costs, is not thereby liable to the marshal for his poundage upon a *ca. sa.* *Ringgold* v. *Hoffman*, iv. 201.
49. It is in the discretion of the Court to allow or refuse costs upon the reversal of the judgment of a justice of the peace. *Ward* v. *Corporation of Washington*, iv. 232.

COSTS, (*continued.*)
50. When a new trial is granted on payment of costs, although the general rule is, that if the costs are not paid by the second day of the term next after granting the new trial, the judgment shall be entered up on the verdict, yet under particular circumstances, the Court will, at that term, set aside the judgment and permit the cause to be tried. *Howe* v. *Dermott*, iv. 711.

COUNSELLOR AT LAW.
See ATTORNEY, 2. *Law* v. *Ewell*, ii. 144.

COUNTERFEIT.
The delivery of counterfeit money to a person to be passed off generally for the benefit of the prisoner, is not a passing "in payment," within the Virginia Act of 19th December, 1792. *United States* v. *Venable*, i. 416.

COURT.
A special session for the trial of criminal causes may be ordered at an adjourned session of the Court, and may be holden at the same time with the adjourned session. *Anonymous*, i. 114.

COVENANT.
1. To an action of covenant for rent, the defendant cannot plead that his lessor had not paid the ground-rent according to his covenant. *Gill* v. *Patton*, i. 143.
2. In an action of covenant for rent, the landlord cannot recover interest. *Id.* 188.
3. Full costs will be given, in covenant, upon one cent damages. *Woodrow* v. *Coleman*, i. 199.
4. Covenant will not lie upon the condition of an injunction-bond. *Summers* v. *Watson*, i. 254.
5. See CHARTER-PARTY, 1, 2, 3. *Winter* v. *Simonton*, iii. 62.
6. The assignee of a ground-rent in fee, may maintain an action of covenant against the administrator of the original grantee, for rent accruing after the death of that grantee, although the land has descended to the heirs, subject to the rent. *Scott* v. *Lunt*, iii. 285.
7. In covenant against two, if one plead infancy, and it be found for him, the plaintiff may enter a *nolle prosequi* against him, and have judgment against the other. *Kurtz* v. *Becker et al.* v. 671.

CRUELTY.
1. Public cruelty to a horse is an indictable offence. *United States* v. *Logan*, ii. 259.
2. It is an indictable offence, cruelly, inhumanly, and maliciously, to cut, slash, and beat his own slave. *United States* v. *Robert Brockett*, ii. 441.
3. Cruelty to a slave by his master. *United States* v. *Lloyd*, iv. 470.
4. Cruelty to a cow. *United States* v. *Jackson*, iv. 483.
5. Cruelty to a slave. *United States* v. *Cross*, iv. 603.

CUSTODY OF THE LAW.
See CONSTABLE. *Brent* v. *Beck*, v. 461.
See DISCONTINUANCE, 2. *Mitchell* v. *Wilson*, iii. 92.

DAMAGES.
1. In slander, one cent damages carries full costs. *Forrest* v. *Hanson*, i. 63.
2. Malice may be given in evidence in aggravation of damages in an action on a bond conditioned to prove the plaintiff a bankrupt. *Sutton* v. *Mandeville*, i. 187.
3. Full costs will be given in covenant upon one cent damages. *Woodrow* v. *Coleman*, i. 199.

DAMAGES, (*continued.*)

4. The value of the article on the day the cause of action accrued, is the true measure of damages for not delivering it according to contract. *McAllister* v. *Douglass*, i. 241.
5. Upon executing a writ of inquiry on a judgment by default, the jury must find at least one mill in damages. *Frazier* v. *Lomax*, i. 328.
6. The rule of damages for not transferring stock according to contract, is the price of the stock on the day on which it ought to have been transferred. *Tayloe* v. *Turner*, ii. 203.
7. In cases of tort, courts have seldom granted new trials on the ground of excessive damages, unless they were so excessive as to imply gross partiality or corruption on the part of the jury. *Swann* v. *Bowie*, ii. 221.
8. The security which a judge, signing a citation on a writ of error which is to be a supersedeas, shall take, is to be for the costs and such damages as the Supreme Court may award for the delay. *Renner* v. *Bank of Columbia*, ii. 310.
9. In mitigation of damages, in an action of slander, the defendant may give evidence of the general reputation of the plaintiff's want of punctuality in payment of his debts. *Turner* v. *Foxall*, ii. 324.
10. See CONTRACT, 14. *Robinson* v. *Cathcart*, ii. 590.
11. In a contract for the delivery of stone, the following words constitute a penalty, and not liquidated damages; namely, "In witness whereof we bind ourselves to pay, each to the other, in case of failure by either of us on this contract, the sum of two thousand dollars, in case the said stone should not be delivered, or when delivered, paid for as above." *Goldsborough* v. *Baker*, iii. 48.
12. In an action upon a replevin-bond, the defendant may, in mitigation of damages, give evidence of title in himself. *Smith* v. *Hazel*, iii. 55.
13. In slander, the plaintiff is not permitted to prove special damage not stated in the declaration; but the plaintiff may recover although he should fail to prove the special damage laid in his declaration. *Kelly* v. *Huffington*, iii. 81.
14. In an action upon the replevin-bond, for not returning the property, the defendant may, in mitigation of damages, show that no rent was arrear. The value of the goods stated in the replevin-bond, is *prima facie* evidence of the plaintiff's damages, and if the defendant should contend for a less amount, the burden of proof is on him to show it. *Wood* v. *May*, iii. 172.
15. If the jury, in replevin, do not find the value of the goods distrained, their finding of the amount of rent-arrear is surplusage. *Ibid.*
16. In an action upon a replevin-bond, it is competent for the defendant, in mitigation of damages, to show that the title to the property was in the plaintiff in replevin. And the plaintiff in the action upon the bond may rebut such evidence by showing that the deed under which the plaintiff in replevin claimed title, was fraudulent and void. *Ringgold* v. *Bacon*, iii. 257.
17. Upon the dissolution of an injunction to stay proceedings upon a judgment of the Circuit Court of the District of Columbia, damages at the rate of ten per cent. per annum must be awarded, unless it be a bill to obtain a discovery, or some part of the judgment remain enjoined. *Mason* v. *Muncaster*, iii. 403.
18. See ASSAULT AND BATTERY, 1. *Conner* v. *Cockerill*, iv. 3.
19. See CHESAPEAKE AND OHIO CANAL COMPANY, 6. *Chesapeake and Ohio Canal Company* v. *Union Bank*, iv. 75.
20. If the husband does not die seized, the widow is no more entitled to damages in equity for the non-assignment of her dower, than she is at law. *Alexander* v. *Selden*, iv. 96.

DAMAGES, (*continued.*)

21. Dower will be assigned in equity where there has been a parol partition by tenants in common; and damages will be awarded from the time of the demand, if the husband died seized. *Nutt* v. *Mechanics Bank*, iv. 102.
22. See APPEAL, 4. *Bank of the Metropolis* v. *Swann*, iv. 139.
23. If cattle be impounded for damage-feasant, the badness of the plaintiff's fence is no justification of pound-breach, but may be given in evidence in mitigation of damages. *Young* v. *Hoover*, iv. 187.
24. See BILLS AND NOTES, 12. *Grammer* v. *Carroll*, iv. 400.
25. In an action of trover for negroes, the plaintiff may give evidence of and recover damages beyond the value of the property converted. *Nevett* v. *Berry*, v. 291.
26. If the vendor state, under his seal, that he has bargained, sold, and delivered the property to the vendee, the vendor, in an action of trover brought by the vendee for the property, is estopped to deny the delivery; and such an instrument is evidence of property in the vendee at the time of the conversion. If, after the conversion, the parties enter into a new contract respecting part of the property which is thereupon delivered to the vendee, such new contract and delivery are not evidence of the performance of the first contract on the part of the vendor; nor of relinquishment of damages for such conversion, unless such vendee received such portion of the property as a compliance with the original contract, and intended thereby to relinquish his claim for damages for the previous conversion. *Ibid.*
27. If the property of a debtor be sold under a deed of trust to greater amount than the debt, the surplus cannot be enjoined and stayed in the hands of the trustee to answer damages which the plaintiff may recover against the debtor at law, for not delivering up the possession of the property according to his agreement; unless the debtor be insolvent. *Connolly* v. *Belt et al.* v. 405.
28. If the terms of a deed of trust be, that if the debt be not paid at the time appointed, the trustee shall sell the property; and if it be sold accordingly, the sale will not be set aside because a sale of part of the property would have been sufficient to raise the money, especially if the property consist of a single lot, and there be subsequent incumbrancers who agree that the whole shall be sold. The trustee, in such a case, cannot sell a part only, without the consent of all the parties concerned. *Ibid.*
29. See AGENT, 4. *Ibid.*
30. If, in replevin, upon the plea of property in the defendant, the jury find for the defendant, and assess his damages to the value of the goods replevied, the defendant may still maintain an action upon the replevin-bond, and recover damages beyond the value of the goods. *Hemstead* v. *Colburn*, v. 655.

DEATH.

1. In case of the death of a plaintiff, the filing of letters of administration is such a proceeding in the case before the tenth day of the second court as will justify the Court in retaining cognizance of the cause under the Act of Maryland, 1785, c. 80, § 1. *Wilson* v. *Harbaugh*, i. 315.
2. The defendant is not of course entitled to a continuance, upon the death of the plaintiff. *Alexander* v. *Patten*, i. 338.
3. See BILLS AND NOTES, 45. *Bank of Washington* v. *Reynolds*, ii. 289.
4. See ADMINISTRATION, 12. *Owen* v. *Blanchard*, ii. 418.
5. The Court will not quash a *fi. fa.* issued after the death of the defendant, if it bear *teste* before his death. *Kane* v. *Love*, ii. 429.
6. See BANK OF WASHINGTON, 1. *Brent* v. *Bank of Washington*, ii. 517.

DEATH, (*continued.*)
7. If the defendant die after office-judgment and writ of inquiry awarded, his administrator cannot plead *plene administravit*, nor any other plea which the original defendant himself could not have pleaded. *Janney* v. *Mandeville*, ii. 31.

DEBT.
1. In Virginia, debt lies by the indorsee of an inland bill against the acceptor. *Vowell* v. *Alexander*, i. 33.
2. Debt lies against the maker of a promissory note. *Gardner* v. *Lindo*, i. 78.
3. In debt, the declaration must be for a sum certain. *Ashtan* v. *Fitzhugh*, i. 218.
4. In Alexandria, the Court has jurisdiction of an action of debt on a note for two hundred and fourteen dollars, although the sum due upon it be reduced, by payments, to eight dollars and ninty-four cents. *Hays* v. *Bell et al.* i. 440.
5. An action of debt, under the Virginia law, may be maintained upon a promissory note, against a secret partner who has not signed it. *Bank of Alexandria* v. *Mandeville*, i. 575.

DECEIT.
1. An action upon the case for deceit will not lie for a breach of promise. *Fenwick* v. *Grimes*, v. 439.
2. If the owner of a female slave sell her for less than the market price, upon the purchaser's representation that he wished to have her for his own service, and that she should not be removed from this district, nor sold to any person to be by him transported out of the district, and that she should live in the district near her friends; and the purchaser afterward sell her to a negro trader living in the district, by means whereof she is removed from the district; it is no justification of the defendant in an action for the deceit, that after he had purchased the slave, he was persuaded, by a friend, that she was unfit for his use, and that he ought to sell her; although the purchase was originally made in good faith. *Ibid.*
3. An action upon the case for deceit will not lie unless there was a false affirmation of some fact; a non-performance of promises is not sufficient. The declaration must charge that the defendant averred some fact to be true, and that it was false. *Ibid.*
4. An action upon the case for deceit will lie against a person who by false and fraudulent representations induces the plaintiff to sell his female slave for less than her value. *Id.* 603.

DECLARATION.
1. See BILLS AND NOTES, 46. *Lepeyre* v. *Gales*, ii. 291.
2. A judgment for the defendant in replevin, without a declaration, is irregular, and will, on motion, be set aside, even at a subsequent term. *Ringgold* v. *Elliot*, ii. 462.
3. In an action for maliciously holding the plaintiff to bail, the declaration must aver the want of probable cause, and for want of such an averment the judgment will be arrested. *Zantzinger* v. *Weightman*, ii. 478.
4. In trover by husband and wife for the conversion of the wife's goods before the marriage, the declaration must conclude *ad damna ipsorum*. *Semmes and Wife* v. *Sherburne*, ii. 534.
5. See BILLS AND NOTES, 95, 96. *Coyle* v. *Gozzler*, ii. 625.
6. A declaration for a malicious arrest and holding to bail must contain an averment that the suit in which the plaintiff was so maliciously held to bail was determined. *Barrell* v. *Simonton*, ii. 657.
7. A variance between the *capias ad respondendum* and the declaration, is not a ground for arresting the judgment. *Wilson* v. *Berry*, ii. 707.

DECREE.

1. A decree *nisi* upon default of appearance and answer to a bill in chancery, does not become absolute until the end of "the term next succeeding that to which the decree shall be returned executed." *Stewart* v. *Smith*, ii. 615.
2. See AGENT, 4. *Connolly* v. *Belt*, v. 405.
3. The Court will set aside a sale made under its decree, if not fairly made. *Bank of Alexandria* v. *Taylor*, v. 314.
4. See DAMAGES, 3, 4. *Connolly* v. *Belt*, v. 405.
5. A sale made by a trustee under a decree of the Court will not pass the title of land in the actual adverse possession of a third person at the time of the decree. *Carroll* v. *Dowson*, v. 514.

DEDIMUS.

1. Notice, given to an attorney at law, of a motion for a *dedimus*, is sufficient. *Potts* v. *Skinner*, i. 57.
2. The Court in Alexandria, will not grant a commission to examine witnesses in a suit at common law, without showing it to be necessary for the purposes of justice. *Sutton* v. *Mandeville*, i. 115.

DEED.

1. The execution of a deed need not be proved if it be acknowledged and recorded. *Edmondson* v. *Lovell*, i. 103.
2. It is not necessary to the delivery of a deed as an *escrow*, that the obligee should be privy to its delivery, nor that the thing, to be performed as a condition of the delivery, should be a thing to be done by the obligee. *Mayor and Commonalty of Alexandria* v. *Moore*, i. 193.
3. A subscribing witness to a deed may be compelled to attend court to prove the execution, so that it may be recorded. *Irwin* v. *Dunlop*, i. 552.
4. The adding of a new surety without the consent of the others, makes the bond void. *Long* v. *O'Neale*, i. 233.
5. A deed of land in Maryland acknowledged by the grantor before two justices of the peace of the county in which the grantor then resided, not being the county in which the land laid, is not properly recorded under the Maryland Act of 1766, c. 14, unless there were indorsed on the deed, a certificate of the clerk of the county, under the seal of the court, that the two justices were, at the time, justices of the peace of that county, and such certificate recorded with the deed. *Milligan* v. *Mayne*, ii. 210.
6. See CONSIDERATION, 9. *Munro* v. *Robertson*, ii. 262.
7. Whatever may be the words of grant in a deed, it is the office of the *habendum* to limit and confine them, and to ascertain the commencement and duration of the estate created or conveyed by the deed. *Mitchell* v. *Wilson*, iii. 242.
8. A deed of bargain and sale was made by J. W. to his brother T. W., of a negro woman named Bet and her increase, "from and after the date hereof," "with this reserve, that they are to remain with my father, J. W., who is to hold and have the entire use and benefit of them during his life; and at his decease my said brother Thomas, his heirs, executors, administrators, or assigns to take, hold, and possess them ever after; To have and to hold the said negro Bet and her increase as aforesaid, (from and after the decease of my father as aforesaid,) unto my said brother Thomas Wilson, his heirs, executors, administrators, and assigns, with general warranty from and after the decease of my father as aforesaid." *Held*, that neither T. W. nor his father took any thing by the deed. *Ibid.*
9. See COPY, 1. *Bank of the United States* v. *Benning*, iv. 81.
10. An original deed which has been recorded in the land records under a decree in chancery, according to the Maryland Act of 1792, c. 41, § 3,

DEED, (*continued.*)
may be adduced in a subsequent action of ejectment, and identified as the deed thus ordered to be recorded, although it did not continue to remain on file in the suit in which it was ordered to be recorded. *Ibid.*
11. Parol evidence may be given that the persons who took and certified the acknowledgment of a deed, were, at the time of taking and certifying the same, justices of the peace; and it is not necessary that their official character should appear upon the face of their certificate of acknowledgment. *Ibid.*
12. The parties to deeds are estopped to deny the truth of the recitals therein; and if the deeds are offered only to show the transmission of the legal title, the truth of the recitals need not be proved *aliunde*. *Ibid.*
13. If a deed of bargain and sale be made by a trustee, the legal estate passes, whether the terms of the trust are complied with or not. For if the bargainee takes with notice, he himself stands as trustee in the place of the bargainor; if without notice, and for a valuable consideration, he takes an absolute title; for a trustee conveys by virtue of the legal estate vested in him, and not by virtue of a power. *Ibid.*
14. A deed of bargain and sale by a person not in possession, is void. *Ibid.*
15. If, by the terms and nature of the deed, the possession of the property is to accompany and follow the deed and it does not, but remains with the grantor; such deed is fraudulent in law and void as to the creditors of the grantor, although the deed should be acknowledged and recorded according to the Maryland law of 1729, c. 8, § 5; but such deed is void only against creditors of the grantor who thus retains the possession inconsistently with the terms and nature of the deed. *Smith* v. *Ringgold*, iv. 124.
16. A deed, executed in Massachusetts by one of the grantors, on the 1st of February, 1810, and by the other grantor on the 10th of August, 1810, in Georgetown, D. C., is to be considered as dated when the last grantor executed it; and if recorded within six months after that date, it is recorded in due time. *Kurtz* v. *Hollingshead*, iv. 180.
17. A widow is not bound by her acknowledgment of a deed not recorded. *Ibid.*
18. In the case of a sale under a creditor's bill, the heirs are entitled to the rents and profits from the death of their ancestor until the sale. *Ibid.*
19. A creditor who seeks to set up a lost deed of trust not recorded in due time must come in *pari passu* with the other creditors. *Ibid.*
20. See COPY, 2. *Lemon* v. *Bacon*, iv. 466.
21. A deed from a daughter was set aside, both on the ground of the relation between the parties, and the conveyance being of a reversion to the tenant for life without valuable consideration. *Pye* v. *Jenkins*, iv. 541.
22. See CORPORATION OF WASHINGTON, 3, 4. *Rodbird* v. *Rodbird*, v. 125.
23. See BARON AND FEME, 3. *Bank of the United States* v. *Lee*, v. 319.
24. *Id.* 8. *Prather* v. *Burgess*, v. 376.
25. In 1823, the commissioner of the public buildings had authority to take the acknowledgment of deeds of land in Washington county. *Middleton* v. *Sinclair*, v. 409.
26. A purchaser under an execution against the grantor has a right to show the deed to be fraudulent as to the creditor under whose execution he purchased. *Ibid.*
27. Although there may be a variance in some respects in the description of the land in the two deeds, they may be given in evidence to the jury, who may decide the question of identity. *Ibid.*
28. A conveyance to his son by a father, of all his estate and effects, while indebted, and continuing in possession after the conveyance, is evidence of intent to delay, hinder and defraud his creditors. *Ibid.*
29. The vendee of land cannot, after paying the purchase-money, recover it

DEED, (*continued.*)
back upon failure of the vendor to convey, unless the vendee has tendered to the vendor the form of a deed of conveyance to be executed by the vendor. But if the vendor has not a good title at the time he is bound to convey, the vendee may recover back the purchase-money, without tendering a form of conveyance, as he is not bound to accept a defective title. *Guttschlick* v. *Bank of the Metropolis*, v. 435.

30. If the vendee receive an insufficient deed as a compliance with the vendor's contract to convey, and afterward discover that the title of the vendor is defective and that the deed conveys nothing; the vendee, in an action against the vendor to recover back the purchase-money may give the said deed in evidence with other evidence showing the title to be defective, &c. *Ibid.*
31. If the vendor's title be defective the vendee may recover back the purchase-money, in an action of *assumpsit*, although he has been in possession of the premises several years. *Ibid.*
32. A deed of personal property, to be void if the grantor shall, on demand, pay a certain sum to the grantee, is void in law as to the creditors of the grantor, unless the possession accompanied and followed the deed, although acknowledged and recorded agreeably to the Maryland Act of 1729, c. 8, §§ 5, 6. *Smith* v. *Hunter*, v. 467.
33. A mortgage of all a man's stock in trade and debts due to him, to secure payment of a debt already due and payable by him to the mortgagee on demand, is void as to creditors unless the possession accompanied and followed the deed, although acknowledged according to the Maryland Act of 1729, c. 8, § 5. *Noyes et al.* v. *W. L. Brent Garnishee*, v. 656.

DELUSION.

1. The Court, in forming its opinion as to the soundness of mind of the testator, will look rather to the facts upon which the witnesses have formed their opinions, than to the opinions themselves; but form its opinion from the whole evidence consisting of facts and opinions. *Newton et al.* v. *Carbery*, v. 626.
2. The influence, which will set aside a will, must be undue influence. The influence of the general doctrines of the church of which the testator was a member, is not such undue influence; nor can the holding of such doctrines be adjudged to be such delusion as will vacate the will. The Court has no jurisdiction to decide whether a doctrine held by any particular religious sect, be true or false.
   A delusion, common to all the members of a religious sect, will not avoid the will. *Ibid.*
3. See APPEAL, 2. *Ibid.*

DEMAND.

See CONTRACT, 3. *Somers* v. *Tayloe*, ii. 138.

DEMURRER.

1. A special demurrer will not be admitted to set aside an office-judgment. *Whetcroft* v. *Dunlop*, i. 5.
2. The plaintiff is not obliged to join in demurrer to the evidence, unless the demurrer expressly admits every fact which the jury might reasonably infer from the testimony; but if the demurrer be joined, the Court will infer what the jury might infer. *Negro Patty* v. *Edelin*, i. 74.
3. The defendant will not be ruled to argue the demurrer at the term in which the demurrer shall have been joined by him, although the rule to join in demurrer shall have expired before the term. *Bowman* v. *French*, i. 74.
4. A demurrer which admits a fact in one cause, is not evidence of that fact

DEMURRER, (*continued.*)
in another cause, although between the same parties. *Auld* v. *Hepburn*, i. 122, 166.
5. After judgment for the plaintiff on the defendant's demurrer and writ of inquiry awarded, the Court will not permit the defendant to plead *de novo* without withdrawing his demurrer. *Woodrow* v. *Coleman*, i. 192.
6. The Court will not give leave to amend a demurrer unless it goes to the merits. *Offutt* v. *Beatty*, i. 213.
7. It is no ground of general demurrer to an indictment for misdemeanor under the laws of Virginia of 1792 and 1795, that the name of a prosecutor is not written at the foot of the indictment. *United States* v. *Sanford*, i. 323.
8. A special demurrer brings into question the substantial validity of the pleading of the demurring party. *Vowell* v. *Lyles*, i. 428.
9. The Court will permit the defendant to withdraw the general issue and file a general demurrer. *Deakins* v. *Lee*, i. 442.
10. After judgment for the plaintiff upon demurrer to the replication to the plea of limitations, the Court will not permit the defendant to withdraw the demurrer and rejoin specially; unless he can show, by affidavits, that it is necessary to the justice of the case. *Wilson* v. *Mandeville*, i. 452.
11. The Court may, in its discretion, allow the general issue to be pleaded after judgment upon the demurrer has been awarded by the Supreme Court of the United States, and a mandate to this Court to enter the judgment, and award a writ of inquiry. *Sheehey* v. *Mandeville*, ii. 15.
12. A count for injuring the plaintiff's mare by negligence, and a count upon a promise to return the mare safe, may be joined, and advantage can only be taken of the misjoinder, if it be one, by special demurrer. *Dobbin* v. *Foyles*, ii. 65.
13. If the plaintiff demur to the defendant's plea to a chancery attachment, he thereby waives his right to move to strike out the plea, on the ground that it was pleaded without giving special bail. *Irwin* v. *Henderson*, ii. 167.
14. A person, for whose benefit an action is brought, but who does not appear to be a party upon the record, nor to be interested in the cause, cannot come in, and, in his own name, reply fraud and collusion between the legal plaintiff and the defendant, to defeat the action; and such a replication is bad upon demurrer. *Welch* v. *Mandeville*, ii. 82.
15. Upon a prayer for an instruction to the jury, the Court, in considering the question whether the jury can, from the evidence, infer the facts necessary to justify the instruction prayed, must decide in the same manner as they would upon a demurrer to the evidence, and will consider all those facts as proved which the jury could legally infer from the evidence; but, upon the question whether the instruction prayed be justified from the facts stated in the prayer, the Court is bound to decide upon those principles which ought to govern them in deciding upon a special verdict. The ultimate facts upon which the party relies must be expressly and absolutely stated. The Court can infer nothing. *Bank of Alexandria* v. *Deneale*, ii. 488.
16. If the plaintiffs are misnamed in the title of the cause in the margin of a plea of limitations, the plea is bad on special demurrer. *Bank of Columbia* v. *Jones*, ii. 516.
17. The title of the cause, written in the margin of a plea, is no part of the plea, but is only an intimation to the clerk in what cause he is to enter the plea; and a mistake in the name of one of the parties in the cause made in the marginal title, is not fatal to the plea, even upon special demurrer. *Bank of Columbia* v. *Ott*, ii. 529.

DEMURRER, (*continued.*)

18. The defendant cannot take advantage of a variance between the writ and declaration without praying oyer of the writ. *Triplet* v. *Warfield*, ii. 237.
19. Upon the defendant's demurrer to evidence, the Court cannot render judgment for the plaintiff if the declaration be substantially defective. *Bank of the United States* v. *Smith*, ii. 319.
20. The Court will not compel a party to join in demurrer to the evidence unless the other will admit all such facts as might be fairly inferred from the evidence. *Jordan* v. *Sawyer*, ii. 373.
21. The time of filing the indictment will appear by the caption when the record is made up; and, upon demurrer, the judgment must be upon the whole record; and if upon the whole record it should appear to the Court that the offence was committed beyond the time limited, judgment must be rendered for the defendant. *United States* v. *Watkins*, iii. 441.
22. The defendant has a right, upon demurrer, to avail himself of the statute of limitations. *Ibid.*
23. The limitation of two years in the Act of April 30, 1790, is applicable to common-law offences in the District of Columbia. *Ibid.*
24. The Court may, in a criminal case, suffer the defendant to withdraw his demurrer to the indictment, after argument, and after the Court has intimated an opinion that it ought to be overruled, and before judgment entered upon the demurrer. *Ibid.*
25. Although a judgment against the defendant upon demurrer in a case of misdemeanor is peremptory, yet it is not so if against the United States, for they may send up new bills of indictment successively, until they have made their case perfect in form. *Ibid.*
26. Upon suffering a defendant to withdraw his demurrer after argument, and after an intimation of the opinion of the Court, they may require him to waive his right to move in arrest of judgment for any matter apparent upon the indictment. *Ibid.*
27. Upon a general demurrer, the judgment must be against him who commits the first substantial fault in the pleadings. A special demurrer operates as a general demurrer as to all the pleadings of the party demurring.
    A rejoinder is bad which avers several distinct answers to the replication, or tenders an issue upon matter of law. *McCue* v. *Corporation of Washington*, iii. 639.
28. A general demurrer to the declaration must be overruled if it contain one good count, although it contain also three bad counts. *Ibid.*
29. It is not universally true that what would be fatal upon demurrer would be equally fatal in arrest of judgment. Upon demurrer, the Court decides upon the whole record as it then appears; but upon a motion in arrest of judgment the Court decides upon the whole record as it then appears. There may be a *prima facie* cause of demurrer, which may be removed by the subsequent pleadings. *United States* v. *Henry H. White*, v. 73.
30. See AMENDMENT, 2. *Suckley* v. *Slade*, v. 123.
31. If it appear from the whole record upon an indictment for a misdemeanor, that the offence was committed more than two years before the indictment was found, the defendant may avail himself of that defence by a general demurrer. *United States* v. *Richard H. White*, v. 368.
32. If evidence be given on both sides, and be complicated, the Court will not compel the plaintiff to join in demurrer to the evidence. *Stewart* v. *Columbia Ins. Co.* ii. 442.

DEPOSITION.

1. A deposition taken under a commission may be read in evidence, unless the opposite party can prove that the witness is within reach of the process of this Court. *Ridgway* v. *Ghequier*, i. 4.

DEPOSITION, (*continued.*)

2. One hour's notice to the attorney at law of the opposite party, of the time and place of taking a deposition, when the party lives in the same village or town, is reasonable notice, unless special circumstances should render it unreasonable. *Leiper* v. *Bickley*, i. 29; *Nicholls* v. *White*, *Id.* 58.
3. A deposition taken by *dedimus*, may be in the handwriting of the counsel of the party. *Ibid.*
4. If a party has had no opportunity to cross-examine a witness whose deposition has been taken under the Act of Congress, the Court will continue the cause. *Dade* v. *Young*, i. 123.
5. One day's notice to the attorney at law is sufficient to take the deposition of a seafaring-man, under the Maryland law, 1721, c. 14, § 3; but it cannot be read unless the witness has gone from the district. *Bowie* v. *Talbot*, i. 247.
6. It is not neeessary that the notice of taking a deposition under the Act of Congress should state the reason for taking it. *Debutts* v. *Mc Culloch*, i. 286.
7. To enable a party to read in evidence a deposition taken *de bene esse*, under the Act of Virginia, he must prove that the witness is unable to attend. *Jones* v. *Greenolds*, i. 339.
8. When depositions have been taken by one party without notice to the other, the cause may be continued. *Straas* v. *Marine Ins. Co.* i. 343.
9. A deposition taken *de bene esse*, cannot be read in evidence if the witness lives within one hundred miles of the place of trial, although he live out of the district. *Park* v. *Willis*, i. 357.
10. A deposition taken and filed by the defendant may be read in evidence by the plaintiff, upon proof that the witness is beyond the jurisdiction of this Court. *Ibid.*
11. Under the Virginia law respecting the taking of depositions, notice to the attorney at law is not sufficient. *Wheaton* v. *Love*, i. 429.
12. The party will not be permitted to give parol evidence of a cause of caption of a deposition different from the cause stated by the magistrate who took the deposition; and if that cause be insufficient, the deposition will be rejected. *Id.* 451.
13. This Court will not grant a commission in a civil action at common law to take the deposition of a witness residing in Virginia within one hundred miles of the place of trial; because he may be summoned to attend personally. *Wellford* v. *Miller*, i. 485.
14. A deposition taken, but not used by the plaintiff, cannot be read in evidence by the defendant if the testimony would not have been competent for the defendant if it had been taken on his part. *Reid* v. *Hodgson*, i. 491.
15. The judge, who takes a deposition under the Act of Congress, must certify that the witness was cautioned and sworn to testify the whole truth, and that notice was given to the adverse party, or the reason why it was not given. *Pentleton* v. *Forbes*, i. 507; *Garrett* v. *Woodward*, ii. 190.
16. The magistrate who takes a deposition under the Aet of Congress, must certify all the facts necessary to make it evidence under the act. *Jones* v. *Knowles*, i. 523.
17. It is a sufficient averment of the residence of the adverse party by a magistrate who takes a deposition under the Act of Congress, if he certify that it appears to him that the party resides more than one hundred miles from the plaee of caption. *Banks* v. *Miller*, i. 543.
18. If the defendant take and return the deposition of an interested witness, he cannot object to its being read because the witness was interested. *Henry* v. *Ricketts et al.* i. 545.

DEPOSITION, (*continued.*)

19. The fees of a magistrate, in another State, for taking a deposition under the Act of Congress, may be taxed in the bill of costs, in Virginia. *Fry* v. *Yeaton*, i. 550.
20. Two hours' notice of taking a deposition in Alexandria, where all the parties resided, was too short. *Jamieson* v. *Willis*, i. 566.
21. Notice of a motion for a *dedimus* to take depositions in a foreign country, may be given to the attorney at law. *Irving* v. *Sutton*, i. 575.
22. The Court will not, in a civil suit, attach a witness who resides more than one hundred miles from the place of trial, nor issue a subpœna commanding him to go and testify before a magistrate. *Henry* v. *Ricketts et al.* i. 580.
23. A deposition taken without notice, and not upon interrogatories, under a commission issued by consent, cannot be read in evidence. *Dunlop* v. *Munroe*, i. 536.
24. The magistrate who, in taking a deposition under the Act of Congress, reduces to writing the testimony of the witness, need not state that it was done in the presence of the witness; if reduced to writing by the witness himself, it must be done in the presence of the magistrate; and that fact may be proved *aliunde*. The authority of the magistrate need not be proved otherwise than by his own certificate. *Vasse* v. *Smith*, ii. 31.
25. In taking a deposition under the Act of Congress, it is not necessary that the party or the magistrate should give notice to the adverse party or his attorney, if neither be within one hundred miles of the place of caption; nor that the magistrate should certify that he was not of counsel for either of the parties, nor interested in the event of the suit. *Peyton* v. *Veitch*, ii. 123; *Miller* v. *Young*, ii. 53.
26. When notice is given that a deposition will be taken between certain hours, it is not necessary to wait till the last hour. *House* v. *Cash*, ii. 73.
27. If the magistrate who takes a deposition under the Act of Congress, omits to state whether notice was given to the defendants, it is competent for the other party to prove that the defendants lived more than one hundred miles from the place of caption, and had no agent or attorney within one hundred miles, &c. *Travers* v. *Bell et al.* ii. 160.
28. The magistrate who takes a deposition under the Act of Congress, must certify that the deponent was "carefully examined, and cautioned, and sworn, or affirmed to testify the whole truth." *Garrett* v. *Woodward*, ii. 190.
29. The magistrate, who takes a deposition under the Act of Congress, need not certify that the deponent subscribed it in his presence; but the title of the cause in which it is to be used, must be truly stated in the certificate of caption. *Centre* v. *Keene*, ii. 198.
30. A deposition taken under the Act of Congress, must be reduced to writing by the magistrate or by the deponent in his presence. *Edmondson* v. *Barrell*, ii. 228.
31. If, at the trial, all objections to a deposition are waived, and a new trial be granted, the Court will not suffer objections to be made to the same deposition at the new trial. *Ibid.*
32. If a magistrate who takes a deposition under the Act of Congress, certifies that the deponent was carefully examined, and cautioned, and sworn to speak the whole truth, it is to be inferred that he was so examined, &c., by the magistrate. *Ibid.*
33. The magistrate, who takes a deposition under the Act of Congress, must certify the reasons of its being taken. *Woodward* v. *Hall*, ii. 235.
34. In taking *ex parte* depositions under the Act of Congress, the requisites of the act must be strictly pursued. *Thorp* v. *Simmons*, ii. 195.

DEPOSITION, (*continued.*)

35. If the name of one of the defendants be omitted in the caption of a deposition, it cannot be read in evidence in the cause. *Smith* v. *Coleman*, ii. 237.
36. It is not necessary that the magistrate who takes a deposition under the Act of Congress, should certify that the opposite party had no attorney within one hundred miles of the place of caption, in order to excuse the want of notice. *Ibid.*
37. It is no objection to a deposition, that the magistrate omitted to certify that he cautioned the witness. *Brown* v. *Piatt*, ii. 253.
38. If a deposition be taken in a cause against three defendants, one only of whom has been taken, the other two must be notified, &c. *Ibid.*
39. It is no objection to a deposition that, in the caption, it is not stated in which county of the District of Columbia the cause is depending; nor that the name of one of the parties is misspelled; nor that the magistrate has not certified that he reduced the testimony to writing in the presence of the witness; nor that the witness signed it in the presence of the magistrate. *Van Ness* v. *Heineke*, ii. 259.
40. The mistake of the clerk in misnaming one of the parties in a commission to take the deposition of a witness, may be amended by the order, in case of the death of the witness before the trial. *Boone* v. *Janney*, ii. 312.
41. It is not a valid objection to a deposition taken under the Act of Congress, that its envelop is not directed to "the Court," if it be directed to "the judges of the court." *Thorp* v. *Orr*, ii. 335.
42. It is sufficient evidence that the deposition "was sealed up" by the magistrate, if the envelop be sealed, and the name of the magistrate written across the seal. *Ibid.*
43. Depositions taken in another suit for freedom by one of the same family, cannot be read in evidence as hearsay, respecting the condition of their common ancestor. *Humphries* v. *Tench*, ii. 337.
44. The Court will reject a deposition, if the notice was not reasonable. Notice given at noon, to take a deposition between four and six o'clock of the same evening, is not reasonable, if there be no special circumstances to prevent an earlier notice. *Renner* v. *Howland*, ii. 441.
45. In taking a deposition under the Act of Congress, it is not necessary that the notice to the opposite party should require him "to put interrogatories if he should think fit;" nor that the magistrate should certify that the witness was sworn to testify the whole truth "in the matter in controversy;" nor that the testimony, if reduced to writing by the witness, was so done in the presence of the magistrate; nor will a deposition be rejected on account of the evidently accidental omission of a word in the magistrate's certificate of the caption. *Bussard* v. *Catalino*, ii. 431.
46. The *ex parte* deposition of a deceased witness, not taken by consent, cannot be read in evidence. *Zantzinger* v. *Weightman*, ii. 478.
47. When the issue is joined between the plaintiff and the garnishee, in behalf of himself and his principal, the deposition must be entitled as of a suit between the plaintiff and the garnishee, and not between the plaintiff and the principal defendant. *Baker* v. *Mix*, ii. 525.
48. A deposition taken before the mayor of a city, who usually certifies his acts under his official seal, must be so certified, or his authority otherwise proved, which it seems may be done by parol. *Paul* v. *Lowry*, ii. 628.
49. The certificate of a magistrate who takes a deposition of a witness upon his affirmation, in Pennsylvania, that the witness was conscientiously scrupulous of taking an oath, is sufficient evidence of that fact to admit the deposition to be read in evidence. *Elliot* v. *Hayman*, ii. 678.
50. If a *dedimus* issues to take depositions in a cause in which Richard M.

DEPOSITION, (*continued.*)

Meade is plaintiff, whereas the name of the plaintiff was Richard W. Meade, and the commissioners certify that they took the depositions to be read in a cause in which Richard W. Meade was plaintiff, the depositions are admissible, notwithstanding the clerical error in writing an "M" for a W, in the commission. In taking a deposition under a commission, it is not necessary that it should be written by the commissioners, or by their clerk, or by the witness. *Meade* v. *Keene*, iii. 51.

51. A "county commissioner," in the State of Illinois, is not authorized to take depositions under the Judiciary Act of September 24, 1789, § 30, to be used in the courts of the United States. *Gary* v. *Union Bank*, iii. 91.
52. The certificate of the commissioners that they had taken the oath prescribed in their commission, is sufficient evidence of that fact. They are *quasi* officers of the court, and are to be believed. *Winter* v. *Simonton*, iii. 104.
53. In a joint action against two, if one only be taken, and an *alias capias* be issued against the other from term to term, and before he be arrested, a deposition be taken on the part of the plaintiff, by consent of the defendant who was first taken, with an agreement that it should be read at the trial; and if, in the caption of the deposition one only of the defendants be named, and afterward the other be taken, the deposition may be read at the trial against both defendants. *Pannill* v. *Eliason*, iii. 358.
54. The Orphans' Court is not bound to receive as evidence, the testimony taken under a commission not issued by the consent of the parties, and not directed to commissioners mutually named by the parties; and not issued in conformity with any established practice, or rule of the Orphans' Court. *Walsh* v. *Walsh*, iii. 651.
55. The Orphans' Court may adopt the practice of courts of chancery, as to the manner of issuing commissions, or it may establish rules of practice for itself in this respect. *Ibid.*
56. Notice at Washington, D. C., on Thursday, the 31st of December, that a deposition would be taken in Baltimore on the 2d of January, was not reasonable notice. *Barrell* v. *Simonton*, iii. 681.
57. Notice of taking a deposition under the Act of 1789, directed to the party himself, may be served on his attorney at law. *Barrell* v. *Limington*, iv. 70.
58. Notice on the 28th of December, to take a deposition in Alexandria on the 29th, is not too short, all the parties residing in that town. *Atkinson* v. *Glenn*, iv. 134.
59. The Court will not order a commission to take the deposition of a witness residing in Maryland within one hundred miles of the place of trial; because this Court has authority to compel the attendance of the witness. *Gustine* v. *Ringgold*, iv. 191.
60. See BILLS AND NOTES, 1, 2, 3. *Whitney* v. *Huntt*, v. 120.
61. A deposition cannot, under the Act of Congress, be taken before a judge of the City Court of the city of Lexington in Kentucky. *Foreman* v. *Holmead*, v. 162.
62. A commission to take a deposition in a foreign country may issue for the plaintiff, *ex parte*, by order of the Court, or of a judge in vacation, if the opposite party does not file his cross-interrogatories within five days next after the rule-day after the plaintiff shall have filed his interrogatories; provided his interrogatories shall have been filed ten days before the rule-day; and it is not necessary to give notice to the opposite party of the filing of the interrogatories; nor is it necessary that the party, or the commissioner, should give notice to the opposite party of the time and place of taking the deposition in a foreign country; but it must

DEPOSITION, (*continued.*)

appear that the commissioner took the oath annexed to the commission. *Frevall* v. *Bache*, v. 463.

63. In taking a deposition under the Judiciary Act of 1789, the notice must be given by the magistrate before whom the deposition is to be taken. A notice given by the party is not sufficient. *Young* v. *Davidson*, v. 515.

64. By leave of the Court, if no objection be made by the opposite counsel, a party may withdraw from the files of the court, a deposition, in order to get the magistrate to amend his certificate according to the truth of the case; and such withdrawing and amending are not sufficient ground for rejecting the deposition. *Leatherberry* v. *Radcliffe*, v. 550.

65. If a deposition be taken *de bene esse*, because the witness is about to go out of the district, and to a greater distance than one hundred miles from the place of trial, and he goes accordingly, it is not necessary that a *subpœna* should have issued to the marshal of this district, in order to enable the party to use the deposition; it is sufficient for him to prove, to the satisfaction of the Court, that the witness, at the time of the trial, is gone to a greater distance, &c., although the witness may have been within the district between the time of taking the deposition and the time of trial. *Ibid.*

DEPRECIATION.

Upon a deed made in 1779, reversing an annual rent of £26 current money of Virginia forever, the rents accruing during the existence of paper money, are to be reduced according to the scale of depreciation. *Marsteller* v. *Faw*, i. 117.

DESCENTS.

When proceedings are under the general and ordinary jurisdiction of the Court, as a court of law or a court of equity, many things may be presumed which do not appear upon the record, and evidence will not be permitted to contradict the presumptions arising from the acts of the Court; but if the proceedings be under a special authority delegated to the Court in a particular case, and not under its general jurisdiction as a court of common law or of equity, nothing material can be presumed; and the person, claiming title under such proceedings, must show them to be regular, and to be in a case in which the Court had jurisdiction and was authorized to do what it has done.

The proceedings for the partition or sale of the real estate of an intestate under the Maryland Act of Descents, 1786, c. 45, § 8, are under a special jurisdiction given to a county court in a particular case, and every thing necessary to their validity must be proved. A sale under that statute is the act of the commissioners, not of the Court; and to be valid must be ratified by the Court; and such ratification must be absolute, not dependent upon an act to be done *in pais;* and if all the heirs are minors at the time of sale, it is void. *Tolmie* v. *Thompson*, iii. 123.

DETINUE.

1. Detinue will lie for a slave, although the defendant obtained the possession tortiously. *Bernard* v. *Herbert*, iii. 346.
2. Detinue is an action in form *ex contractu*, and not *ex delicto;* and is not, on that ground, to be excluded from the jurisdiction of a justice of the peace. *Maynadier* v. *Duff*, iv. 4.
3. The justices of the peace in Alexandria have jurisdiction in cases of detinue. *Ibid.*
4. In *scire facias* against bail in detinue it is a good plea in bar, that no *ca. sa.* had been issued against the principal. *Bernard* v. *McKenna*, iv. 130.

DEVASTAVIT.

1. See ADMINISTRATION, 3. *Gilpin* v. *Crandell*, ii. 57.
2. *Id.* 11. *Young* v. *Mandeville*, ii. 444.
3. *Id.* 15. *United States* v. *Ricketts*, ii. 553.

DEVIATION.

In a voyage to Pernambuco, the vessel, when she arrived off Pernambuco, came to anchor off the port when she might have gone directly in. *Held*, that it was a deviation which discharged the underwriters. *West* v. *Columbia Insurance Company*, v. 309.

DEVISE.

1. A devise that a slave should be sold for eight years, after which he should be free; the term of eight years began to run from the death of the testator, or within a reasonable time thereafter. *Negro Basil* v. *Kennedy*, i. 199.
2. A devise of land after payment of debts, subjects the land to the payment of the debts. *Wright* v. *West's Executors*, i. 303.
3. The words, "I will in the first place that my just debts be paid," charge the real estate with the payment of the debts. *Mc Culloch* v. *McLain's Executor*, i. 304.
4. A devise to Z. K. or his heirs is a devise to him and his heirs; and a proviso that one of the devisee's sons should have "a double portion more than his other children," takes effect only in case of the death of the devisee in the lifetime of the testator. *Kinsey* v. *Kinsey*, iii. 85.
5. A devise to the executor in trust to apply the rents and income to the support of the widow, with power to sell the estate if the income should not be sufficient, is a devise in fee to the executor, and he is entitled to receive the rents accruing after the death of the wife. *Hardy* v. *Redman*, iii. 635.
6. A devise, by the testator, to his wife "during her widowhood, or in other words while she should bear his name, but in case she should choose to marry again, then it was his wish that the whole of his estate both real and personal should be given to his daughter and her heirs forever;" is a devise to the widow during widowhood with a vested remainder to the daughter in fee. *Farmers Bank* v. *Hooff et al.* iv. 323.
7. The testatrix, having expressed an intention "to dispose of her worldly estate," and having two grandsons, devised one half of a lot of land to one of them and his heirs forever; and devised the other half of the lot, of the same size, to the other grandson upon certain conditions which he complied with; the Court held that he took an estate in fee. *M'Coun* v. *Lay*, v. 548.
8. A legacy for the use or support of a minister of the gospel as such, or to or for the use or support of a religious sect, order, or denomination, is void by the Bill of Rights of Maryland. *Newton* v. *Carbery*, v. 632.
9. A devise, to go in aid of a new Catholic Church, then building in Georgetown, is void for uncertainty, as well as by the Bill of Rights. *Ibid.*
10. A charter granted to certain persons therein named, is to be presumed *prima facie*, to have been granted at their instance, and to have been accepted by them; but such presumption is rebutted by evidence that no proceedings were ever had under the charter, although seven years had elapsed since its date. *Ibid.*

DISCONTINUANCE.

1. The Court will not reinstate a replevin which has been discontinued at a previous term. *Nicholls* v. *Hazel*, ii. 95.
2. A replevin discontinued by the non-appearance of the defendant at the first term may be reinstated at the next if the omission to enter the appearance were the error of the clerk. *Sherburne* v. *King*, ii. 205.

DISCONTINUANCE, (*continued.*)

3. The Court will permit an action of replevin, which has been discontinued at a former term by reason of the non-appearance of the defendant, to be reinstated and the continuances entered up, upon affidavit that the defendant's counsel, on a day during the term, directed the clerk to enter his appearance, and that the clerk neglected to make the entry on the docket. *McCleod* v. *Gloyd*, ii. 264.
4. The discontinuance of a cause, under the Maryland Act of 1785, c. 80, for want of an appearance or proceedings for two terms after the suggestion of the death of a party, is cured by the subsequent appearance, trial, and verdict. *Brent* v. *Coyle*, ii. 287.
5. When an action of replevin has been discontinued by the non-appearance of either party, the Court will not, at a subsequent term, reinstate the cause, unless it appear to be the fault of the clerk that the appearance was not entered. *Williamson* v. *Bryan*, ii. 407; *French* v. *Venable*, ii. 509.
6. If the writ be against two defendants and only one be taken, the cause is discontinued unless an *alias capias* be issued against the defendant not taken, and continued by *pluries*, &c., until the trial term. *Nicholls* v. *Fearson*, ii. 526.
7. In case of attachment by way of execution, if there be no appearance of the principal debtor, or garnishee, or other proceeding at the return-term of the writ, the attachment is discontinued. *Bank of Washington* v. *Brent*, ii. 538.
8. If some of the terre-tenants named in the *scire facias* are returned *nihil*, an *alias scire facias* must be issued against them, or the cause will be discontiuned. *Baker* v. *French et al.* ii. 539.
9. If the cause be *non-prossed* and not reinstated at the same term it cannot be reinstated at a subsequent term; but is discontinued. *Riggs* v. *Chester*, ii. 637.
10. If the defendant in replevin does not appear at the return-term of the writ, the action is discontinued; and the Court will not, at a subsequent term, reinstate it upon affidavit that the defendant requested an attorney to enter an appearance for him, and supposed it had been done. *Thompson* v. *Wells*, iii. 5.
11. After the discontinuance of a replevin, the goods are no longer in the custody of the law, and the defendant is not guilty of a contempt in taking possession of them. *Mitchell* v. *Wilson*, iii. 92.
12. A replevin, discontinued at March term, 1834, by negligence of the clerk, was reinstated at March term, 1835. *McDermott* v. *Nailor*, iv. 527.

DISCOVERY.

A bill of discovery is an ancillary process, and not for original relief. In order to obtain ultimate relief in equity there must be other ground than the mere defect of evidence in an action at law. *Breckenridge* v. *Peter*, iv. 15.

DISFIGURING.

Biting off an ear is not disfiguring within the Virginia Act of December 17th, 1792. *United States* v. *Askins*, iv. 98.

DISORDERLY HOUSE.

1. The time laid in an indictment for keeping a disorderly house is not material. *United States* v. *Burch*, i. 36.
2. A conviction of keeping a disorderly house is a bar for all the time previous to the conviction. *Ibid.*
3. The selling of spirituous liquors to negroes in a public manner, assembled in considerable numbers, and suffering them to drink the same in and

DISORDERLY HOUSE, (*continued.*)
about the house, on the Sabbath, constitutes it a disorderly house. *United States* v. *Prout*, i. 203; *United States* v. *Coulter*, *Id.* 203; *United States* v. *Lindsey*, *Id.* 245.
4. See BY-LAW, 4. *United States* v. *Robin Hood*, ii. 133.
5. In a prosecution for keeping a disorderly house, the general character of the house is in issue, and may be given in evidence. *United States* v. *Henny Gray*, ii. 675.
6. A house kept for the meeting of men and women for illegal and obscene purposes, or of enticing young girls there for debauchery, is a disorderly house. *Ibid.*
7. It is an indictable offence at common law to keep a common gaming-house, and for lucre and gain, to cause idle and evil-disposed persons to come and play together there, and to game for divers large and excessive sums of money, to the common nuisance of the citizens of the United States. *United States* v. *Jacob Dixon*, iv. 107.
8. Upon an indictment for keeping a disorderly house, and for keeping a bawdy-house, the United States cannot give evidence of the general reputation of the house; nor of the general reputation of the defendants. *United States* v. *Jourdine et al.* iv. 338.
9. Upon a count for keeping a disorderly house, charging that the defendant suffered persons of ill-fame to come together, &c., evidence may be given of the general reputation of such persons; and the same evidence is admissible upon a count for keeping a bawdy-house. *United States* v. *Stevens*, iv. 341.
10. Upon an indictment for keeping a disorderly house; and for keeping a a bawdy-house; the United States cannot give evidence of the general character of the defendant. *United States* v. *Warner*, iv. 342.
11. Upon an indictment for keeping a house of ill-fame, evidence of ill-fame of the defendant herself cannot be given. *United States* v. *Nailor*, iv. 372.
12. Upon an indictment for keeping a house of ill-fame, evidence may be given of the ill-fame of its inhabitants; but the witnesses will not be required to disclose their names. The Attorney for the United States will not be permitted to prove that his own witness is a woman of ill-fame. *United States* v. *McDowell*, iv. 423.
13. Facts stated, from which the jury may find the defendant guilty of keeping a disorderly house. *United States* v. *Elder*, iv. 507.
14. An indictment charging that the defendant kept a certain gaming-table called a faro-bank, is not sufficient under the Penitentiary Act of the District of Columbia. *United States* v. *Milburn*, iv. 719.
15. The keeper of a room in which common gaming is carried on for his lucre and gain, and under his management and control, is guilty of keeping a disorderly house; and evidence of his keeping a faro-bank therein may be given under the count for keeping a disorderly house; but an indictment for keeping a common disorderly house is not supported by evidence of keeping a room in which gaming is carried on. It is not necessary to prove that the defendant was also the keeper of the house; nor to prove other disorderly conduct. *Ibid.*
16. An indictment, charging that the defendant kept "a certain unlawful, disorderly, and ill-governed house," "as a common tavern," "without license," "and kept a common tippling-house," and therein openly sold spirituous liquors to all persons calling for the same, and allowed the same to be drunk in and about the house at all times both at day and night, and on Sundays; and permitted certain idle and ill-disposed persons to assemble and continue drinking and tippling, to the common nuisance, &c., is a good indictment at common law for keeping a disorderly house. And evi-

DISORDERLY HOUSE, (*continued.*)

dence that the defendant kept an open house for selling spirituous liquors, and that such liquors were sold to other persons than boarders and lodgers; and that the house was kept open and such liquors there sold on Sundays, and at late hours of the night; and persons intoxicated were seen in and coming out of the house, drunk and disorderly; is sufficient to support the indictment. *United States* v. *Charles Columbus*, v. 304.

17. If a person hires a bar-room and fixtures and occupies part of the house, and keeps his bar-room open on all days, and at all hours, and on Sundays, and other days, for the sale of spirituous liquors to other persons than boarders and lodgers, and allows such liquors to be drunk in the said bar-room, at such days and times; the keeping of such bar-room and house is a nuisance, and will support an indictment for keeping a disorderly house. *Quære?* *United States* v. *Benner*, v. 347.

DISTRESS.

1. Goods in the hands of an officer under a distress for rent, in Virginia, may be attached by the same landlord, for rent not yet due, and may be condemned, although replevied by the tenant after the attachment levied. *Herbert* v. *Ward*, i. 30.
2. An acceptance, by the tenant, of a bill drawn on him by the landlord, for the rent, is not a bar to a distress, if the bill be not paid. *Alexander* v. *Turner*, i. 86.
3. Upon the plea of "no rent arrear," the tenant may give evidence of work done, and goods sold and delivered to the landlord, without notice of set-off. *Fendall* v. *Billy*, i. 87.
4. The landlord may distrain after the death of the lessee. *McLaughlin* v. *Riggs*, i. 410.
5. Upon the issue of "no rent arrear," the landlord is not bound to prove that the distress was laid by his order. *Ibid.*
6. Goods distrained for rent may be sold by the tenant, and the vendee may maintain trover for them after they have been replevied. *Cooke* v. *Woodrow*, i. 437.
7. Property distrained for rent may be transferred by the tenant to the creditors, subject to the lien for the rent. *Cooke* v. *Neale*, i. 493.
8. A distress for rent, laid on the last day of the term at noon, is too soon. *Johnson* v. *Owens*, ii. 160.
9. Costs do not accrue upon levying a distress for rent, unless the goods are sold. *Wright* v. *Waters*, ii. 342.
10. Distress for taxes due to the Corporation of Washington, is not barred by the statute of limitations. *Hogan* v. *Ingle*, ii. 352.
11. Chairs, left with a painter to be repaired, are not liable for his rent. *Mauro* v. *Botelor*, ii. 372.
12. See CONSTABLE, 3. *United States* v. *Williams*, ii. 438.
13. The bailiff of a landlord cannot lawfully force himself into a house by the outer door, (although partially opened by one within,) to make a distress for rent. *United States* v. *Stott*, ii. 552.
14. Goods fraudulently removed by the tenant, although not secretly nor clandestinely, may be followed and distrained by the landlord. *Jenkins* v. *Calvert*, iii. 216.
15. The tenant's removal of his goods before the expiration of the term, without the knowledge of the landlord, and without paying the rent, is a fact from which the jury may infer that the removal was fraudulent as to the landlord. *Ibid.*
16. Trover against the owner will not lie by a bailiff who distrains goods for rent, and leaves them on the premises of the owner, who takes them away. *King* v. *Fearson*, iii. 255.

DISTRESS, (*continued.*)

17. The personal estate of the testator is not liable for taxes accruing upon his real estate in Georgetown, D. C., after his death; but is liable for the taxes upon his personal estate. *Ross* v. *Holtzman*, iii. 391.
18. A distress is not a judicial process. One distress may be made for the taxes due to the corporation and to the county, if made by the same collector. *Ibid.*
19. A distress is the private remedy of the party entitled to the rent, toll, service, tax, or other duty, for which the tenant or debtor is liable. When the party who has made the distress, comes to answer for it, he may justify in different rights, by several avowries, and thus bring each right distinctly before the Court. *Ibid.*
20. Goods conveyed in trust to indemnify the landlord and his indorser against their responsibility upon a note made by the landlord and indorsed by a third person, for the accommodation of the tenant, and left upon the premises by the consent of the landlord, are not liable to distress for rent accruing after the deed of trust, while the third person remains liable as indorser of the note. *Law* v. *Stewart*, iii. 411.
21. The slaves of a stranger, hired to, and in the service and employment of, a lodger in a boarding-house, with the consent of his owner, and found upon the premises, is not liable to be distrained for rent due by the boarding-house keeper; being exempted by the broad principle of public convenience; and not on the ground of his being in the actual use and personal service of his master, unless he be so at the time of the seizing of him by way of distress; and unless the taking of him would be, or tend directly to, a breach of the peace. *Beal* v. *Beck*, iii. 666.
22. See BANK, 3. *Farmers Bank* v. *Fox*, iv. 330.
23. If the landlord evict the tenant from part of the premises, he cannot distrain for the rent. If he is entitled to an apportionment of the rent, he may maintain an action for use and occupation; but if he is not entitled to an apportionment of the rent, he has no remedy. *Baker* v. *Jeffers et al.* iv. 707.
24. See BILLS AND NOTES, 19. *Griffin & Tilley* v. *Woodward*, iv. 709.
25. See ATTACHMENT, 9. *Calvert* v. *Stewart*, iv. 728.
26. A lease for twenty years, not acknowledged nor recorded, is not a lease at will, and the landlord may distrain for the rent; although the original lessee should not have been in possession for several years next before the distress, or should have died. The tenancy does not cease by the tenant's setting up an adverse claim more than six months before the distress. *Semmes* v. *McKnight*, v. 539.
27. A *bonâ fide* purchaser at a tax-sale, without collusion with the tenant, may enter under his purchase and convey to a third person, who will not thereby become tenant of the original landlord; but if there be collusion between the tenant and the purchaser, to suffer the taxes which it was the duty of the tenant to pay, to remain unpaid, and thereby cause a sale by the collector of taxes, so as to enable the purchaser to buy in the property for the benefit of the tenant, the title of the property is not changed by such tax-sale, and the tenant remains tenant to the original landlord. *Ibid.*
28. The assessment and advertisement of property in a wrong name does not make the tax-sale void since the Act of May 26, 1824. *Ibid.*
29. If an improvement extend over divers lots, personal property found on any of the lots, is liable for the taxes on all the lots so improved. *Ibid.*
30. Under a reservation of twenty dollars rent, "clear of all taxes and charges," the tenant is bound to pay the taxes as well as the rent; although there be a clause of re-entry for the non-payment of the rent. *Ibid.*
31. If the marshal take the goods of a tenant in execution, and before he

DISTRESS, (*continued.*)

removes them the landlord distrains them for rent; and the marshal then removes them from the premises without paying a year's rent to the landlord, who then replevies them, the Court will, on motion of the defendant, at the return of the writs, order the goods to be returned to the defendant upon his giving a sufficient bond to return them, &c.

The return in such case is a matter of course, unless the court should be satisfied, "that the defendant obtained possession of the property by force or fraud; or that the possession being first in the plaintiff, was got or retained by the defendant without proper authority or right derived from the plaintiff." *Remington* v. *Linthicum*, v. 345.

DISTRIBUTION.

1. See ADMINISTRATION, 12. *Moffit* v. *Varden*, v. 658.
2. If property be devised to the children of A. B., to be divided among them when they arrive at the age of maturity, the established rule of construction is, that all the children then living (that is, when the eldest shall have arrived at the age of twenty-one,) shall come in for their share, whether born before or after the death of the testator. The shares of those who have died in the mean time will have lapsed into the general residuum, to be divided among the survivors; and the children born in the mean time become entitled to their equal shares with the other children. If one die after the eldest shall have arrived at the age of twenty-one, and before actual distribution, his share goes to his next of kin, and does not lapse into the residuum. *Ibid.*
3. When the devise is directly to the children of the testator's brother and sister, the devisees take *per capita* and not *per stirpes*. *Ibid.*

DISTRICT OF COLUMBIA.

The jurisdiction of the United States over the District of Columbia vested on the first Monday of December, 1800. *United States* v. *Hammond*, i. 15.

DIVORCE.

A decree for a divorce *a vinculo*, and declaring that the articles entered into, previously, for alimony, should remain in force, is no bar to an action on the bond given to perform those articles. *McGowan* v. *Caldwell*, i. 481.

DOG.

1. A constable is not justified under the by-law of Alexandria, in killing a dog, unless the jury expressly find that the dog was "found going at large within the limits of the corporation without his owner." *Swann* v. *Bowie*, ii. 221.
2. See CORPORATION OF WASHINGTON. *Corporation of Washington* v. *Lynch*, v. 498.
3. It is an indictable offence at common law, to incite, provoke, and encourage a fierce and dangerous dog to bite and tear a cow. *United States* v. *McDuell*, v. 391.
4. *Quære*, whether in an indictment for keeping a large dog of a fierce and furious nature, and suffering him to go at large in and about the public streets, &c., to the great terror of the people, and common nuisance, it is necessary to aver a *scienter*. *Ibid.*

DOWER.

1. If the widow renounce the provision made for her in the will, the remainder-man takes an immediate estate in the property devised; subject to the widow's dower. *Ladd* v. *Ladd*, ii. 505.
2. The widow is not entitled to dower in lands of which her husband died possessed, but to which he had no legal title, although he had paid the whole purchase-money. *Williams* v. *Barrett*, ii. 673.

DOWER, (*continued.*)
3. Upon a writ of dower, the marriage may be proved by parol evidence of cohabitation as man and wife. *Blodget* v. *Thornton*, iii. 176.
4. A widow cannot be barred of her dower by a tax-sale, either under the Act of Congress laying a direct tax, or for the county taxes; nor by a sale under a decree in the lifetime of the husband. *Blodget* v. *Brent*, iii. 394.
5. A widow, before actual assignment of her dower, has no estate in the land. It is an incumbrance on the land into whosoever hands it may pass; but she is not seized, and has no right to enter, or to pay the taxes, or to redeem the land when sold for taxes. The tenant, until assignment of dower, is bound to pay the taxes. A purchaser at a sale for taxes acquires only the right of the person in whose name the property was assessed. *Ibid.*
6. See DAMAGES, 3. *Alexander* v. *Selden*, iv. 96.
7. *Id.* 4. *Nutt* v. *Mechanics Bank*, iv. 102.
8. A widow is not barred by her acknowledgment of a deed not recorded. *Kurtz* v. *Hollingshead*, iv. 180.
9. See BARON AND FEME, 3. *Bank of the United States* v. *Lee*, 319.

DRUNKARD.
A prisoner should not be found guilty, if, at the time of committing the act, he was in such a state of mental insanity not produced by the immediate effects of intoxicating drink, as not to have been conscious of the moral turpitude of the act. *United States* v. *Michael Clarke*, ii. 158.

DUEL.
See CHALLENGE, 1. *United States* v. *Shackelford*, iii. 178.

DURESS.
See ADMINISTRATION, 1. *Foy* v. *Talburt*, v. 124.

DUTIES.
1. In actions upon duty-bonds, the United States are entitled to judgment at the return term. *United States* v. *Johns*, i. 284.
2. Sureties of an insolvent debtor, in a duty-bond, are not entitled to judgment at the first term against their principal. *Johns* v. *Brodhag*, i. 235.
3. A surety, who has paid money for a bankrupt in discharge of a duty-bond, has not the right of the United States to proceed against the person of the bankrupt; but only against his effects. *Kerr* v. *Hamilton*, i. 546.
4. The United States have no specific lien on imported goods, for the duties, after having taken bond and security therefor, and delivered the goods to the consignee. *United States* v. *Murdoch et al.* ii. 486.
5. The consignee is to be considered, under the sixty-second section of the Collection-Act of 1799, as the owner. The consignor never was the debtor of the United States for the duties. *Ibid.*
6. The United States may maintain *indebitatus assumpsit* for duties not bonded. *United States* v. *Howland*, ii. 508.

EJECTMENT.
1. In ejectment, upon a re-entry for non-payment of rent, the plaintiff need not show a title in fee, if he has been in possession forty-four years; nor that there were not sufficient goods on the premises within the first thirty days; nor that he demanded the rent on the day it became due; nor on what part of a vacant city lot the rent was demanded. *Cooke's Lessee* v. *Vasse*, i. 25.
2. In ejectment for a lot in Washington, it is not necessary to show a grant from the State of Maryland. *O'Neale* v. *Brown*, i. 69.

EJECTMENT, (*continued.*)
3. The legal title of the trustees cannot be set up against the *cestuis qui trust. Ibid.*
4. By the Acts of Maryland, 1791, c. 45, § 2, and 1793, c. 58, the legal title vests in the *cestui qui use. Ibid.*
5. In April, 1797, the commissioners were authorized to sell the public lots in Washington. *Ibid.*
6. In ejectment the plats are a part of the pleadings; in trespass they are only evidence. *Pancoast* v. *Barry*, i. 176.
7. A person interested in supporting a particular location, is not a competent witness to prove it. *Ibid.*
8. All locations not counter located, are admitted to be correct. *Ibid.*
9. Course and distance must yield to boundaries proved. *Ibid.*
10. Permanent and useful improvements made upon the land, may be given in evidence in mitigation of damages in an action of trespass for *mesne* profits, brought after recovery in ejectment. *Gill* v. *Patten*, i. 465.
11. In ejectment, if the clerk, by mistake, omit to enter the tenant's appearance at the first term, and judgment be entered against the casual ejector, and a *habere facias* be issued, the Court will, at a subsequent term upon affidavit, quash the *habere facias*, rescind the judgment, and permit the tenant to appear, upon entering into the common rule. *McCormick* v. *Magruder*, ii. 227.
12. When the plea in ejectment is "not guilty," or "defence on title," the defendant may give evidence of possession without warrant or location. *Bank of the United States* v. *Benning*, iv. 81.
13. See AMENDMENT, 1. *McDaniel* v. *Wailes*, iv. 201.
14. A purchaser under a deed of trust, need not give notice to quit, before bringing ejectment against the grantor of the trust deed. Notice to quit is not necessary, where the relation of landlord and tenant does not exist.
    If, by the terms of the deed of trust, the grantor was to hold possession until a sale should be made under the deed, his tenancy ceases with the sale, and notice to quit is not necessary. *Waters* v. *Butler*, iv. 371.
15. In ejectment, the death of the plaintiff's lessor cannot be taken advantage of, upon the general issue. *Worthington* v. *Etcheson*, v. 302.
16. To show possession in the lessor of the plaintiff, who was a purchaser at a sale under a decree of foreclosure, it is sufficient to show that the mortgagor was in possession until his death; and a lease for life, made by the mortgagor, is evidence of his possession, although the lease was not recorded. *Ibid.*
17. When the defendant is a disseizor and intruder, he is not entitled to notice to quit. *Ibid.*
18. If tenant for his own life die, and his heir enter, he is a disseizor and intruder. *Ibid.*
19. If the vendee of land who has paid part of the purchase-money, enter into possession, and fail to pay the residue according to the contract of sale, although demanded, the vendor cannot maintain ejectment against him without a notice to quit, or a notice that the contract is rescinded; or a demand of payment, and notice of rescinding. *Costigan* v. *Wood*, v. 507.
20. See AMENDMENT, 4. *Wilkes* v. *Elliot*, v. 611.
21. If no adversary possession be shown, a plaintiff in ejectment may recover without showing possession or the right of possession, or an entry or a right of entry, in his lessor, within twenty years. *Ibid.*
22. A parol declaration, by the lessor of the plaintiff, that he had not authorized the suit, is not competent to show the title to be out of the lessor of the plaintiff. *Ibid.*

EJECTMENT, (*continued.*)

23. The defendant's possession for twenty years, is no bar in ejectment, unless the defendant, or the person under whom he claims, entered originally under color or claim of title; or unless, being in possession he set up a color or claim of title hostile to that of the plaintiff more than twenty years before the commencement of the suit, and continued in possession ever since; but if the defendaut, or the person under whom he claims, entered upon and inclosed the premises more than twenty years before the commencement of the suit, without any recognition of the title of the lessor of the plaintiff, but claiming them as his own, and continued to occupy them until suit brought, the jury may infer that the possession was adverse; and if so, the plaintiff cannot recover. *Ibid.*
24. A person who holds a bare possession of a lot in Washington, without evidence of any *bonâ fide* title in fee, in law or in equity; such possession being either adverse or tortious as to the legal title and estate of the lessor of the plaintiff, or subordinate to such title and estate, cannot protect his possession, after paying previous taxes, by clothing it with the legal title obtained by refusing to pay subsequent taxes, with intent to purchase the lot at the tax sale. *Ibid.*
25. If the party who calls for an account-book in the possession of the other party, examine it, he makes it evidence for such other party. *Ibid.*
26. A purchase at a tax-sale, and inclosed possession under it, give color of title. *Ibid.*

ELECTION.

1. A stockholder of a bank, who has pledged his stock to the bank as collateral security for the payment of his notes not yet due, has a right to vote as a stockholder at an election of directors. *Scholfield* v. *Union Bank*, ii. 115.
2. A declaration for a libel, charging the plaintiff with an attempt to put two votes into the ballot-box at a corporate election, must contain an averment of the by-law under which the election was held. *McClean* v. *Fowle*, ii. 118.
3. The Columbian Insurance Company of Alexandria cannot, by a trustee, vote in an election of directors of the company, upon stock of the same company, purchased by the company, and held for their use in the name of the trustee. *United States* v. *Columbian Ins. Co.* ii. 266.
4. See CORPORATION OF WASHINGTON, 5. *United States* v. *Carbery*, ii. 358.
5. In an action by the Rockville and Washington Turnpike Railroad Company, it is not necessary for the plaintiff to prove that the managers were elected by a majority of votes. *Rockville and Washington Turnpike Road Co.* v. *Van Ness*, ii. 449.
6. Judges of election are not liable criminally, unless they acted from a corrupt motive. *United States* v. *Gilles et al.* ii. 44.
7. Upon a motion to discharge a defendant arrested upon a *capias ad respondendum* by a marshal appointed by the President *de facto* of the United States, the Court will not decide the question whether he was duly elected to that office. *Peyton* v. *Brent*, iii. 424.
8. The mortgagor of stock in the Marine Insurance Company, until foreclosure and sale, is entitled to vote upon the stock at the election of directors, and the Court will compel the mortgagee, or his trustee to give a power of attorney to the mortgagor to vote at such election. *Vowell* v. *Thompson*, iii. 428.
9. An action cannot be maintained upon a promissory note, given upon a wager that Andrew Jackson would get the electoral vote of Kentucky for the office of President of the United States, because the consideration was illegal; although the parties themselves were not qualified to

ELECTION, (*continued.*)
vote at the election; because such a contract tends to draw in question the validity of the election of the chief magistrate of the nation. *Denney* v. *Elkins*, iv. 161.

EMANCIPATION.
No implied emancipation arises from a legacy of $25 bequeathed to slaves who are ordered by the will to be sold. *Negro Bacchus Bell* v. *McCormick*, v. 398.

EMBEZZLEMENT.
1. See BANK, 5. *United States* v. *Forrest*, iii. 56.
2. If a clerk embezzle the goods of his employer, and convert them into money, and deposit it in a bank to his own credit, injunction will not lie to restrain him from disposing of it, although he has no other property, and is about to leave the district; no debt being positively averred so as to justify a *ne exeat*. *McKenzie* v. *Cowing*, iv. 479.

ENLISTMENT.
See APPRENTICE, 1, 2. *Ex parte Browne*, v. 554.

EPISCOPAL CHURCH.
The vestry and wardens of "the Protestant Episcopal Church of Alexandria," were the vestry of the Protestant Episcopal Church in the parish of Fairfax, in the ecclesiastical meaning of those terms, as modified by the laws and constitution of Virginia and the canons of the church. By the sale made under the decree, in the case of *Taylor et al.* v. *Terret et al.*, the purchasers became privies to the church, and may avail themselves of the estoppel resulting from the warranty of Daniel Jennings, the original grantor. *Mason* v. *Muncaster*, ii. 274.

EQUITY.
1. A Court of Equity will not interfere to prevent an administrator from preferring a creditor by confessing a judgment at law. *Wilson* v. *Wilson*, i. 255.
2. By the laws of Virginia in 1801, a Court of Equity could decree a sale of one moiety of the fee-simple of the debtor's lands in the hands of his heir at law. *Prime* v. *McRea*, i. 294.
3. Cause may be shown against a decree *nisi* at any time during the term and before any other order is made. *Allen* v. *Thomas*, i. 294.
4. A Court of Equity will not decree the execution of a verbal agreement to pay the debt of another, although confessed in the answer, if the statute of frauds be pleaded and insisted on in the answer. *Thompson et al.* v. *Jamesson*, i. 295.
5. A deposition taken more than six months after replication, in a chancery suit, cannot be read at the hearing, unless taken by consent, or by order of the Court, or out of the district. *Wiggins* v. *Wiggins*, i. 299.
6. The absence of a witness, at the trial at law, is no ground of equity to obtain an injunction to stay proceedings at law on a judgment. *Chapman* v. *Wise & Scott*, i. 302.
7. Equity will not relieve against a judgment at law upon *plene administravit* on the ground that the defendant at law could not produce vouchers to support his plea; unless there be, in the bill, an allegation of fraud, mistake, surprise, or accident. *Wilson's Administrator* v. *Bastable*, i. 304, 394.
8. The laws of Maryland respecting security for fees and costs, do not apply to suits in equity. *Ray* v. *Law*, i. 349.
9. Equity will compel the defendant to give up an inventory necessary to enable the plaintiff to support his action at law. *Walker* v. *Wanton*, i. 397.

EQUITY, (*continued.*)
10. The Court will not enjoin what may or may not be a nuisance. *Ramsay* v. *Riddle*, i. 399.
11. The proceeds of sales of land made under a will to pay debts, are equitable assets. *Dixon* v. *Ramsay*, i. 496.
12. See BANK, 1. *Davis* v. *Beverly & Riggs*, ii. 35.
13. See CONTRACT, 2. *Dunlop* v. *Hepburn*, ii. 86.
14. In Alexandria an execution *de bonis propriis* is the proper process against an executor upon a decree in equity for the balance of his administration account. *Catlett* v. *Fairfax*, ii. 99.
15. The Court will not, on motion, quash the return of a *fi. fa.* levied upon an equity of redemption. *Warfield* v. *Wirt*, ii. 102.
16. A plaintiff at law, in Alexandria, D. C., after the dissolution of an injunction, having taken out his execution and obtained satisfaction of his judgment at law, cannot, in an action upon the injunction-bond, recover the interest which accrued upon his judgment while he was delayed by the injunction. *Grundy* v. *Young*, ii. 114.
17. A trustee appointed by a debtor to sell the mortgaged premises to the highest bidder, is bound to see that the sale is fairly made, and that there is a real competition. He is as much bound to take care of the interest of the debtor as of the creditor; and if he finds only sham competitors, he ought not to proceed with the sale at that time, but adjourn and give a new notice. If there were no competitors at the sale and the creditor has bought the property at his own price, and recovered judgment at law for the balance of the debt, the Court will injoin that judgment until the real value of the land bought in by the creditor, and the circumstances of the sale shall be ascertained upon final hearing. *Fairfax* v. *Hopkins*, ii. 134.
18. The person who takes a dishonored check payable to bearer, takes it subject to the drawers equity against the person from whom he received it. If the holder, at the time of his receiving the check, knew that the person who gave it to him, had no right to give it, he cannot recover against the drawer. *Rounsavel* v. *Scholfield*, ii. 139.
19. *Quære*, whether a Court of Equity can, or ought, to decree the specific execution of a contract for the sale of personal goods in any case whatever? *Harper* v. *Dougherty*, ii. 284.
20. This Court cannot grant an injunction to prevent the execution of the Act of Congress of the 7th of May, 1822, for draining the low grounds in the city of Washington. *Van Ness* v. *United States*, ii. 376.
21. A cause in equity, in this Court, may be reheard, if the petition for rehearing be filed before the end of the next term after the final decree, and if no appeal lies to the Supreme Court in that cause. *Clarke et al.* v. *Threlkeld*, ii. 408.
22. See BONDS, 3. *Smith* v. *Crease*, ii. 481.
23. A slave who has been manumitted and lost her deed of manumission, may have relief in equity. *Negro Alice* v. *Mortè et al.* ii. 485.
24. Unless some party defendant, against whom an effectual decree can be made, be found within the District of Columbia, the Circuit Court of that district, as a court of equity, has no jurisdiction of the cause. *Vasse* v. *Comegyss et al.* ii. 564.
25. Upon a motion to dissolve an injunction, an averment in an answer, not responsive to any allegation in the bill, is not, *per se*, evidence against the complainant. An answer of the defendant, in order to be evidence in his favor, must be an answer to a fact, and not an answer to a mere inference of law. *Robinson* v. *Cathcart*, ii. 590.
26. It is only between equal equities that the rule applies, *prior in tempore potior in jure. Ibid.*

EQUITY, (*continued.*)
27. A voluntary conveyance is void as to subsequent purchasers for valuable consideration, even with notice. *Ibid.*
28. When husband and wife are co-defendants, service upon the husband alone is good service of the subpœna. *Ibid.*
29. An injunction till answer will not be dissolved until all the defendants who are interested have answered. *Ibid.*
30. The Court may decree the specific execution of a contract to give collateral security. *Ibid.*
31. The answer of one defendant is not evidence for the other. *Ibid.*
32. A motion to dissolve an injunction before final hearing, is not technically set for hearing on bill and answer. A cause is not set for hearing on bill and answer until it is set for final hearing. *Ibid.*
33. A mistake of the law is not a ground for relief in equity, where no fraud is charged. *Ibid.*
34. If there are several defendants, the Court will not, in general, dissolve the injunction until all have answered. *Ibid.*
35. In allowing claims upon a trust fund, as between contending creditors, a claim, upon judgment of more than twelve years standing, must be rejected, without pleading the statute of limitations, as there was no time when the debtor, or his administrator, could plead it. *Farmers and Mechanics Bank* v. *Melvin*, ii. 614.
36. The widow is not entitled to dower in lands to which her husband had only an equitable title. *Williams* v. *Barrett*, ii. 673.
37. He who takes a legal title, with notice of a prior equitable title, is trustee for him who holds the equitable title; but the legal title obtained by a purchaser under the former, although with notice of the prior equitable title, will not be disturbed, if the purchaser was encouraged by the latter to pay the purchase-money. *Kurtz* v. *Bank of Columbia*, ii. 701.
38. If the plaintiff has a legal claim he must pursue his remedy at law as far as he can before resorting to equity. *Coombe* v. *Meade et al.* ii. 547.
39. A purchaser under a power given, by will, to the executor to sell real estate for the payment of debts, is not bound to see that the purchase-money is properly distributed among the creditors of the testator. *Greenway* v. *Roberts*, ii. 246.
40. A decree *nisi*, upon default of appearance and answer to a bill in chancery does not become absolute until the end of the term next succeeding that to which the decree shall be returned executed. *Stewart* v. *Smith et al.* ii. 615.
41. A Court of Equity will, at any time, upon motion and notice, dissolve the injunction for want of equity in the bill. *Kidwell* v. *Masterson*, iii. 52.
42. A Court of Equity will not grant relief upon grounds of which the complainant might have availed himself at law. *Ibid.*
43. Before a court of equity will stay a judgment at law it must see clearly that the complainant has equity on his side. *Ibid.*
44. If a complainant in equity has lost his legal lien and priority, a Court of Equity will not set it up against other creditors equally meritorious. *Kurtz* v. *Hollingshead*, iii. 68.
45. See BANK, 6. *Riggs* v. *Swann et al.* iii. 138.
46. The complainant may file exceptions to the defendant's answer, although two months have expired since the answer was put in, if the defendant has not left a rule to reply. *Brent* v. *Venable*, iii. 227.
47. See BILLS AND NOTES, 14. *Garey* v. *Union Bank*, iii. 233.
48. A purchaser under a decree for the sale of real estate for deficiency of personal estate will be authorized by the Court to redeem the property from a tax-sale and will be allowed to deduct from the purchase-money the amount paid for such redemption. *Oneale* v. *Caldwell et al.* iii. 312.

EQUITY, (*continued.*)

49. The purchaser under the decree of the Court is the "legal representative" of the proprietor who was chargeable with the tax, and is entitled within two years after the tax-sale to redeem the property under the first provision of the tenth section of the charter of 1820, upon the payment of the taxes and expenses of sale paid by the purchaser, with ten per cent. per annum as interest thereon; and is not bound to pay for any improvements thereon, nor for interest on taxes paid after the tax-sale. The word "reinstate" must be construed to apply as well to the "legal representative" of the proprietor charged with the tax as to the proprietor himself. *Ibid.*
50. The Court of Equity which decrees a sale of real estate, has authority in Washington county, D. C., to cause the purchaser under its decree to be put in possession by a writ of injunction, and if that be disobeyed, by a writ of *habere facias possessionem. Ibid.*
51. This Court, at Washington, cannot decree the sale of the lands of an intestate if any of the heirs are non-resident infants. *Hastings* v. *Granberry*, iii. 319.
52. *Quære*, whether this Court, as a Court of Chancery, can decree the partition or sale of the real estate of an intestate under the Maryland Act of Descents of 1786, c. 45, § 8? *Ibid.*
53. A decree must be according to the *allegata* as well as *probata. Ibid.*
54. The proceeds of sale of an equitable estate are equitable, not legal, assets. *Law* v. *Law*, iii. 324.
55. In a suit upon a creditor's bill charging the real estate of an intestate for deficiency of personal assets, the answer of the administrator, and his account settled with the Orphans' Court, are *prima facie* evidence of the deficiency of the personal estate against the answers of the infant defendants who do not pretend to have any personal knowledge upon the subject. *Hayman* v. *Keally et al.* iii. 325.
56. An answer relying upon the statute of limitations is in time, if filed before the bill is taken for confessed. *Ibid.*
57. It is no bar, in equity, to the statute of limitations, that the plaintiff could not proceed against the real estate until the personal was exhausted, or the deficiency of personal assets ascertained. If the plaintiff's right of action is barred at law by the statute of limitations, it is barred in equity. *Ibid.*
58. The principle that the statute of limitations will not protect trustees, applies only to express, not constructive trusts. *Ibid.*
59. If the Statute of Limitations begins to run in the lifetime of the intestate, it is not interrupted by his death and the want of administration. *Ibid.*
60. A mere equitable interest in lands is not liable to attachment and condemnation, by way of execution under the Maryland law of 1715, c. 40. *Sawyer* v. *Mortè*, iii. 331.
61. Under the English Statute of 5 G. 2, respecting lands in the plantations, the legal estate only was liable to execution at law. The cases of *Campbell* v. *Morris; Pratt* v. *Law and Campbell*, and *Ford* v. *Philpot*, considered. *Ibid.*
62. The answer of a defendant in chancery is not evidence of new matter set up by way of defence and not responsive to any allegation in the bill. *Robinson* v. *Cathcart*, iii. 377.
63. The representation, by the plaintiff, of his opinion upon a subject respecting which the defendant is as competent to judge as the plaintiff; if honestly made, although incorrect, cannot be considered as such a misrepresentation of a material fact as should prevent a decree for the specific execution of a contract. *Ibid.*
64. A voluntary settlement, however free from actual fraud, is, by the opera-

EQUITY, (*continued.*)
tion of the Stat. of 27 Eliz., c. 4, deemed fraudulent and void against a subsequent purchaser, for valuable consideration, even with notice. *Ibid.*
65. In the following words in a written contract, namely, "In further confirmation of the said agreement the parties bind themselves, each to the other in the penal sum of one thousand dollars;" the sum of one thousand dollars is a penalty, and not liquidated damages. *Ibid.*
66. The parol evidence which is to control the plain legal import and construction of a written instrument, which, if admissible at all, (which, perhaps, it may be in showing cause against a decree for a specific performance,) should be very clear, strong, and explicit, and not dependent upon mere inferences drawn from equivocal expressions, recollected some years after the transactions. *Ibid.*
67. The decree must be according to the *allegata* as well as *probata*. *Ibid.*
68. A mistake of the law is not a ground of relief in equity where no fraud is charged. *Ibid.*
69. A vendee, coming into equity to obtain the legal title of a lot upon which the purchase-money has been fully paid, must pay the balance due to the vendor upon other lots. *Bank of Columbia* v. *Dunlop*, iii. 414.
70. A legal term for years, does not merge in an equitable title to the reversion. *Litle* v. *Ott et al.* iii. 416.
71. It is no equitable ground for enjoining a judgment at law that the complainants have commenced a suit at law against the plaintiffs in the judgment, to recover unliquidated damages upon a contract, unless the plaintiffs are insolvent, or some good ground exists to believe that the complainants would not be able to obtain payment of the damages which they might recover. *Boone* v. *Small*, iii. 628.
72. The Court will decree a specific execution of an agreement to convey real estate, although the evidence of the conclusion of the agreement be not very clear, if the party, in expectation of such an agreement, has been put into possession, and has made valuable and expensive improvements upon the property. *Thompson* v. *King*, iii. 662.
73. A Court of Equity will not sustain a suit to compel the settlement of the concerns of partners in a government contract, in the profits of which the agent of the government who made the contract, was to participate. *Bartle* v. *Coleman*, iii. 283.
74. See DISCOVERY. *Breckenridge* v. *Peter*, iv. 15.
75. The value of professional services may, in equity, be set off against a single bill, if such was the understanding of the parties. *Ashton* v. *McKim et al.* iv. 19.
76. If the proceedings in equity have not been recorded at full length, the original papers, documents, and docket-entries, may be adduced and used in Court as constituting the record of the case. *Bank of the United States* v. *Benning*, iv. 81.
77. See DEED, 2, 3, 4, 5, 6. *Ibid.*
78. A person indebted for taxes on real estate in Georgetown, D. C., and availing himself of the benefit of the ordinance of the 15th of June, 1822, by giving his notes therefor, creates an equitable lien on the real estate, of which a purchaser is bound to take notice; and he is liable to pay the taxes, with interest, in the same manner as the vendor was bound. *Corporation of Georgetown* v. *Smith*, iv. 91.
79. A purchaser at a sale under judgment and execution, takes only the right of the debtor at the time of the judgment. A judgment at law does not overreach the prior equity of a third person, acquired *bonâ fide* for valuble consideration. *Ibid.*
80. See DAMAGES, 3. *Alexander* v. *Selden*, iv. 96.
81. *Id.* 4. *Nutt* v. *Mechanics Bank*, iv. 102.

EQUITY, (*continued.*)

82. See CONTRACT, 2, 3, 4. *Arden* v. *Brown*, iv. 121.
83. A trustee, who is directed by the deed of trust to sell the property and invest the proceeds in productive funds, and fails to do so, is liable to pay interest. *Nicholson* v. *McGuire*, iv. 194.
84. A receipt given by a young man just arrived at full age, for a certain sum as his share of his father's estate, is not a bar in equity to his demanding the interest and dividends upon the fund to which he was entitled by the terms of the deed of trust. *Ibid.*
85. See ACCOUNT, 1. *United States* v. *Fitzgerald*, iv. 203.
86. A purser who disburses money for the United States, which it is not his duty, as purser, to disburse, is, in equity, entitled to a reasonable compensation therefor. *Ibid.*
87. Under the third section of the Virginia statute of usury, every debtor has a right to go into equity alleging usury, whether he can or cannot prove it without the aid of the defendant's answer, and although judgment at law may have been rendered against him. *Swann* v. *Brown*, iv. 247.
88. See BANK, 2. *United States* v. *Alexander et al.* iv. 311.
89. Several defendants who have no connection with each other in interest, estate, or contract, and against whom, jointly, the plaintiffs have no cause of suit either at law or in equity, cannot be joined in one bill. *Ibid.*
90. In a suit in equity to foreclose a legal mortgage, the Court will not, before answer, grant an injunction to prevent the mortgagor in possession, from receiving the rents and profits; nor will they appoint a receiver, the defendant being in no default for not answering. *Oliver* v. *Decatur*, iv. 458.
91. The defendant may, at any time, before the bill is taken for confessed, plead, demur, or answer; and the plaintiff is to pursue the same course as if the plea, demurrer, or answer, had been filed before the expiration of the three months limited for answer by the rules of the Court. *Ibid.*
92. See EMBEZZLEMENT. *McKenzie* v. *Cowing*, iv. 479.
93. See DEED, 13. *Pye* v. *Jenkins*, iv. 541.
94. If the answer be filed in term-time the Court will hear a motion to dissolve the injunction at any time, upon reasonable notice. Three days' notice, left at the office of the complainant's solicitor, in his absence from town, is reasonable. *Caldwell* v. *Walters*, iv. 577.
95. A defendant who appears to a bill of revivor, is not entitled to the benefit of the sixth and tenth rules of practice established by the Supreme Court of the United States for the Circuit Courts; but the Court will order the suit to stand revived unless cause be shown to the contrary in ten days. *Oliver's Executors* v. *Decatur*, iv. 592.
96. The commissions of a supercargo of a sequestered cargo are a charge upon the proceeds of sales, and are not included in the indemnity to be granted by the sequestering government. The indemnity stands in the place of the proceeds of sale, and the commissions are a charge upon that indemnity. *Stewart* v. *Callaghan*, iv. 594.
97. A justice of the peace has authority to administer an oath to an answer in chancery. *United States* v. *Cowing*, iv. 613.
98. Upon a creditor's bill against the surviving partner of a mercantile firm, a receiver may be appointed. *Dick et al.* v. *Laird*, iv. 667.
99. This Court, when sitting in a case of partition of an intestate real estate, under the Maryland law of descents, 1786, c. 45, § 8, sits as a county court of common law, exercising a summary jurisdiction given by the statute, and has no authority to grant relief as a Court of Equity. *Shaw* v. *Shaw et al.* iv. 715.
100. In making sale of the real estate of an intestate, where it will not admit of a specific division among the heirs, according to the Maryland Act of Descents, 1786, c. 45, § 8, the commissioners may annex to the terms of

EQUITY, (*continued.*)
sale, a condition, that if the purchaser shall fail to comply with the terms of sale within a certain number of days, the property shall be resold at his risk; and it is not necessary that the first sale should have been ratified by the Court, in order to charge the first purchaser with the loss upon the resale. *Ibid.*

101. If the husband of one of the heirs be a delinquent purchaser and liable to the loss upon the resale, his wife's share of the estate cannot be charged with the loss. But if one of the heirs becomes a purchaser and fails to comply with the terms of the sale, his share of the purchase-money may be applied to make good the loss; although he may, after his default, have assigned his share of the estate, or of the purchase-money, to a stranger. The assignee must take it, *cum onere*. *Ibid.*

102. The commissioners appointed under the Maryland Act of Descents to sell the real estate of an intestate, are liable to be made defendants to a bill in equity, and may be compelled to answer, and account for the money they have received. *Ibid.*

103. When a party is obliged to ask the aid of a Court of Equity to enforce his legal rights, the Court may compel him to do equity, and will only grant him relief to the extent of his equitable rights. *Ridgeway* v. *Hays et al.* v. 23.

104. The consignee to whose possession the property has not come, (it having been seized by a foreign government,) has no right, in equity, to detain the whole sum awarded as indemnity under the French Treaty of July 4, 1831, nor to enjoin, in the Treasury of the United States, more than his expenses and commissions. *Ibid.*

105. The commissioners under the French Treaty of 1831, had no power to decide ultimately between two or more conflicting American claimants. *Ibid.*

106. If the property seized belonged to a firm, one member of which was not a citizen of the United States, his share of the loss could not be allowed as a claim under that treaty; yet he would be entitled to receive, out of the sum awarded to the other members, what he had paid for freight, and for moneys advanced. *Ibid.*

107. The decision of the commissioners is conclusive as to the question whether the claim was valid against the French government under the treaty; but not as to the question whether it was good against the indemnity awarded. *Ibid.*

108. The commissions of the consignee are not chargeable to the French government under the treaty; they are a charge against the indemnity only, as they would have been against the proceeds, if the property had not been seized by the French government, and had been sold by the consignee. *Ibid.*

109. The consignee had a right to make reclamations on the government of France, and were justly entitled to reasonable compensation for their trouble and expenses. *Ibid.*

110. Where the United States are mere trustees of a fund for the benefit of individuals, it seems that it may be enjoined and staid in the treasury. *Ibid.*

111. A decree that one has a specific lien on a lot for the amount expended in improving it, under the expectation of obtaining a title, authorizes him to come upon the insolvent estate of the owner of the lot, as a general creditor for the balance of the money thus expended, after deducting the proceeds of the sale of the lot. *Thompson* v. *King*, v. 93.

112. See BARON AND FEME, 1. *Dorsett* v. *Marshall*, v. 96.

113. Courts of equity have jurisdiction to decree the surrender of negotiable notes unconscientiously withheld by the defendant. *White* v. *Clarke & Briscoe*, v. 102.

EQUITY, (*continued.*)
114. If goods be sold at an abatement of five per cent. from the invoice prices upon the vendee's assurance that the notes given by him therefor should be punctually paid, and he suffers one of them to be protested; and the vendor afterward receives goods for his claim at seventy per cent., the seventy per cent. is to be calculated upon the amount due on the notes, and not upon the full invoice price. *Ibid.*
115. The rule, that if a debtor in compounding with his creditors, secretly promises to give to one more than to the others, in order to induce him to sign the instrument of composition, it is void, only applies to cases where the creditors are supposed mutually to agree with each other as well as with the debtor. But when each creditor is separately compounded with, this principle of mutuality and equality does not apply. Each creditor has a right to make his own bargain with his debtor; and one bargain cannot be void because it is better than another. *Ibid.*
116. A fraud in another transaction between the plaintiff and others, not parties in the cause, cannot invalidate the transaction between the parties to the suit before the court. *Ibid.*
117. The equity of redemption of a leasehold estate, cannot be seized and sold under a *fieri facias*. *Van Ness* v. *Hyatt et al.* v. 127.
118. See BARON AND FEME, 2. *Markoe* v. *Maxcy*, v. 306.
119. The Court will set aside a sale made under its decree, if not fairly made. *Bank of Alexandria* v. *Taylor*, v. 314.
120. See ANSWER. *Dutilh* v. *Coursault*, v. 349.
121. The commissioners under the French convention of July 4, 1831, were authorized to make their award in favor of the person who was the legal and ostensible owner of the property seized, at the time of the seizure; and were not bound to ascertain the rights of, and decide the litigations between conflicting claimants, citizens of the United States. They might select that one whom they deemed best entitled, and award to him the portion of the indemnity applicable to the claim, and leave the others to settle their disputes before the ordinary tribunals of the country, adjudicating according to the municipal law of the land; it is therefore unimportant whether any other citizen of the United States could or could not support an original claim to a part of the indemnity allowed; and no citizen of the United States could, by any judgment of the commissioners, be deprived of his right to resort to the ordinary tribunals of the country to establish his claim to participate in the sum allowed for the whole loss. *Ibid.*
122. It is no objection to the intervening claim of a third person to a part of the fund awarded, that the original claimant, in making the oath required by the commissioners as a condition of receiving the claim, swore falsely, but not fraudulently; the third person not participating in the oath, nor in the motive of the person who made it.
Quære, whether the commissioners had authority to require such a preliminary oath? *Ibid.*
123. In a contest between two litigants respecting the sum awarded by the commissioners, it is not necessary to make all other claimants under the convention parties to the suit. *Ibid.*
124. The party who receives the sum awarded for the whole claim, is a trustee for such as may be entitled to participate therein. *Ibid.*
125. If a second incumbrancer take up a prior incumbrance, which was also a lien upon other property than that bound by the second incumbrance, the second incumbrancer may resort to property bound by the first incumbrance, and enforce his lien upon it. *Peter* v. *Smith et al.* v. 383.
126. See ATTACHMENT, 2. *White* v. *Clarke et al.* v. 401.
127. When a decree for the surrender of certain promissory notes, and the

EQUITY, (*continued.*)

payment of a certain sum of money, is affirmed by the Supreme Court of the United States with costs and damages at the rate of six per cent. per annum, and the cause is remanded to the Circuit Court by mandate commanding that court, "that such execution and proceedings be had in the said cause, as of right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding;" and the Court thereupon orders the defendant, without further delay, to bring the notes into court to be cancelled, and the sum mentioned in the decree, with interest thereon, and the costs of this suit, and the costs in the Supreme Court to be paid by the complainant; the defendants cannot supersede this order by confessing a judgment out of court, under the Maryland Act of 1791, c. 67, § 1, more than two months having elapsed since the original decree was rendered. *Ibid.*

128. Advances, to the master of a ship seized and carried into France in 1810, and liberated after eighteen months detention, made, after her release, to enable her to prosecute her homeward voyage, are not a lien on the compensation awarded to the administrator of the owner, by the commissioners under the French convention. The plaintiff must resort to the administrator of the owner for payment in the ordinary course of administration; especially if the person making the advances takes bills of exchange for the amount advanced. *Mason* v. *Cutts*, v. 465.
129. See BILLS AND NOTES, 13. *Smith* v. *Arden*, v. 485.
130. A sub-purchaser, who gets in the paramount title, is bound in equity to fulfil his contract with the first purchaser, deducting what he has been obliged to pay to get in the title. *Ibid.*
131. See ADMINISTRATION, 9, 10. *Vaughan* v. *Northop*, v. 490.
132. A purchaser at a trustee's sale, for money payable by instalments with interest from the day of sale, and with leave to take immediate possession, is bound to pay interest from that day, although he should decline to take possession until some months thereafter while investigating the title, and waiting for the vendor to clear it; but is entitled to the rents and profits accruing during the same time. *Markoe* v. *Coxe*, v. 537.
133. If the purchaser pays the money into court by order of the judge granting the injunction to stay a resale by the trustee, the interest ceases from the time of such payment. *Ibid.*
134. A court of equity will not lend its aid to enforce a judgment at law obtained upon a prize ticket in a lottery drawn by mistake, in a place not authorized by law. *Smith* v. *Chesapeake and Ohio Canal Co.* v. 563.
135. Exceptions to an answer for insufficiency, may be filed after exceptions for impertinence. *Patriotic Bank* v. *Bank of Washington*, v. 602.
136. A bill in equity, filed without being signed by the plaintiff or his counsel, will be ordered to be taken off the files because it cannot be received under the 16th rule of this court. When taken off it may be signed, and made the ground of a new injunction. *Roach* v. *Hulings*, v. 637.
137. If a judgment at law has been obtained by surprise, or without the knowledge of the defendant or his counsel, in a case in which the defendant had taken a bill of exceptions, and intended to prosecute a writ of error to the Supreme Court of the United States, and to obtain a *supersedeas*, this Court will, upon a proper appeal bond and injunction bond being given, stay the execution by injunction. *Ibid.*
138. In suits in equity in the Circuit Court, District of Columbia, depositions taken under the Act of Congress of 1789, cannot be read in evidence. *Walker* v. *Parker*, v. 639.
139. If, upon the return of depositions, the opposite party except "to the caption as well as to the substance of them," he may, at the hearing, even after the lapse of several years, specify his objections and insist upon them. *Ibid.*

EQUITY, (*continued.*)
140. If, upon cross-examination of a witness in taking his deposition, he appears to be interested, and therefore incompetent, the objection to his competency is not waived by pursuing the cross-examination upon the merits of the case. *Ibid.*
141. Executors, who are parties in the cause, cannot be examined without an order of the Court to examine them; and such an order will not be given if they are interested. *Ibid.*
142. A *feme covert*, having a separate estate in the hands of her trustee, may contract debts and bind her separate estate for the payment; and the Court will appoint a receiver to collect the rents and profits. *Semmes* v. *Scott*, v. 644.
143. See ADMINISTRATION, 12. *Moffit* v. *Varden*, v. 658.
144. See DISTRIBUTION, 2. *Ibid.*
145. When lands of a deceased debtor are sold for payment of his debts, under a decree founded upon the Maryland Act of 1785, c. 72, § 5, the heirs at law are entitled to the rents and profits until the day of sale; and if the decree and the proceedings under it, including the sale, be set aside upon a bill of review, and a decree of restitution be obtained while the heirs are infants, they may jointly maintain a bill in equity against the purchaser, or other party who has received the rents and profits; and are not obliged to sue for them separately at law. They have a right to an account and discovery. *Ritchie* v. *Bank of the United States*, v. 605.
146. See AGENT, 5. *Yates* v. *Arden*, v. 526.
147. If the bill be originally filed by the complainants for themselves, and such other creditors as shall choose to come in and contribute to the expenses of the suit," the complainants, before answer, have a right to amend their bill, by striking out those words, although some of the other creditors shall have filed their petitions to be let in as complainants; but the complainants must pay the petitioners their costs. *Ibid.*

ERROR.
1. A writ of error is not a *supersedeas* unless served within ten days after the rendition of the judgment, although the parties should have agreed to stay execution for two months, and the writ of error should have been served before the expiration of that time. *Thompson* v. *Voss*, i. 108.
2. After a writ of error has been served and returned to the Supreme Court, the record is no longer before the court below, and cannot be amended, although at an adjourned session of the same term, it appear that the writ of error has been dismissed in the Court above, at the request of the party praying the amendment. *United States* v. *Hooe*, i. 116.
3. A writ of error is not a *supersedeas*, unless a copy of the writ be filed in the clerk's office, for the adverse party, according to the Judiciary Act of 1789, § 23. *Moore* v. *Dunlop*, i. 180.
4. If the writ of error be not a *supersedeas*, the Court below may proceed to execution. *Grundy* v. *Young*, i. 443.
5. The refusal of a new trial is not error. *Henry* v. *Ricketts*, i. 545.
6. A writ of error is not a *supersedeas*, unless a copy of it be lodged for the adverse party in the clerk's office within ten days after the judgment. *Ex parte Negro Ben*, i. 532.
7. See AMENDMENT, 1, 2. *Marsteller* v. *McClean*, ii. 8.
8. In Virginia, a judgment on confession is equal to a release of errors, and the Court will not grant a writ of error *coram vobis* upon suggestion of the death of the plaintiff, where the justice of the case does not require it; nor will they quash a *fieri facias* issued in favor of the plaintiff's administrator, upon suggestion of the death of the administrator after the award of execution. *Catlett* v. *Cooke*, ii. 9.
9. The security which a judge signing a citation upon a writ of error, which is to be a *supersedeas*, shall take, is to be for the costs and such damages

ERROR, (*continued.*)
as the Supreme Court may award for the delay. *Renner* v. *Bank of Columbia*, ii. 310.
10. See AGENT, 1, 2. *Bank of Washington* v. *Bank of the United States*, iv. 86.

ESCAPE.
1. The marshal is liable, if he suffers a debtor in execution to escape, although the debtor returns into custody, and the marshal has him at the return of the *ca. sa.* *United States* v. *Brent*, i. 525.
2. The marshal is not, upon his bond, liable for the escape of a person taken and in his custody on *ca. sa.* for fines, &c., whether prayed in commitment in execution or not. *United States* v. *Williams*, v. 619.

ESCROW.
It is not necessary to the delivery of a deed as an escrow, that the obligee should be privy to its delivery, nor that the thing to be performed as the condition of the delivery should be done by the obligee. *Mayor and Commonalty of Alexandria* v. *Moore*, i. 193.

ESTATE.
The word "estate" will apply to real or personal estate, or to both, according to the manner in which it is used in reference to the respective clauses of the will. The following clause in the will did not charge the real estate: "I am security for my brother James for two sums of money for which I hold a deed of trust upon his property, sufficient, I hope, to pay the same; and I do direct that my estate shall not be liable to pay those debts, until the property so deeded shall be sold, when my estate must be charged for any deficiency." *Stump* v. *Deneale*, ii. 640.

ESTOPPEL.
1. The master of an apprentice is concluded by the recital in the indentures, as to the age of the boy. *McCutchen* v. *Jamieson*, i. 348.
2. See EPISCOPAL CHURCH. *Mason* v. *Muncaster*, ii. 274.
3. In an action upon a prison-bounds-bond, the defendant is estopped to deny that there was such a judgment as that recited in the bond, and the plaintiff is not bound to produce the record of the judgment. *Allen* v. *Magruder*, iii. 6.
4. If the vendor, in a deed of land, has no title at the date of the deed, but acquires a good title afterwards, the title thus acquired enures to the benefit of the first vendee against a subsequent vendee who claims by a deed made after the title accrued to the vendor; and the vendor, and all who claim under him, are estopped by his first deed, to deny that the vendor had title at the date of that deed. *Corcoran* v. *Brown*, iii. 143.
5. See DEED, 4. *Bank of United States* v. *Benning*, iv. 81.
6. See DAMAGES, 2. *Nevett* v. *Berry*, v. 291.
7. The assignor of a bond is not estopped to deny its validity at law. *Moncure* v. *Dermott*, v. 445.

EVICTION.
1. In an action for mere use and occupation, not founded on an express contract for an entire rent, eviction of part is not a bar to the whole action. *McGunnigle* v. *Blake*, iii. 64.
2. See DISTRESS, 2. *Baker* v. *Jeffers*, iv. 707.

EVIDENCE.
1. Parol evidence cannot be given of a statement of an account by a Master in Chancery in a suit pending in another Court. *Sutton* v. *Mandeville*, i. 2.

EVIDENCE, (*continued.*)

2. Diligent inquiry for a subscribing witness will not dispense with his testimony, if it appear that he is within the country. *Broadwell* v. *Mc Clish*, i. 4.
3. Upon a writ of inquiry in Virginia, the plaintiff's own oath may be received as evidence of the amount of his claim. *Mandeville* v. *Washington*, i. 4.
4. A deposition taken under a commission may be read in evidence, unless the opposite party can prove that the witness is within reach of the process of this Court. *Ridgeway* v. *Ghequier*, i. 4.
5. Although the contract offered in evidence vary from that stated in the special count, yet the receipt for the purchase-money, at the bottom of the contract, is evidence on the money counts. *Anderson* v. *Alexander*, i. 6.
6. Upon indictment for larceny under the Act of Congress, the owner of the goods stolen is a competent witness for the United States, after having released to them his half of the fine. *United States* v. *Clancey*, i. 13.
7. The certificate of the presiding magistrate is not necessary to an exemplification of the records of Virginia and Maryland for the purpose of obtaining execution under the act of 27th of February, 1801, § 13. *Parrott* v. *Habersham*, i. 14.
8. Comparison of handwriting is admissible evidence in civil causes. *Dunlop* v. *Silver*, i. 27.
9. One hour's notice to the attorney at law of the opposite party, of the time and place of taking the deposition, when the party lives in the same village or town, is reasonable notice, unless special circumstances should render it unreasonable. *Lieper* v. *Bickley*, i. 29.
10. A certificate of an oath taken by a slave-owner may be given in evidence although it vary from the oath required by law. *Negro Rose* v. *Kennedy*, i. 29.
11. In trover, a demand and refusal are not always evidence of conversion. *McIntosh* v. *Summers*, i. 41.
12. The indorsement of the name of a witness, by the grand jury, on the presentment, is *prima facie* evidence that it was made upon his testimony. *Commonwealth* v. *Gordon*, i. 48.
13. The United States cannot give evidence of the general bad character of the prisoner, unless he should first have given evidence to support his character. *United States* v. *Carrigo*, i. 49.
14. One hours' notice of taking a deposition in Alexandria is sufficient. *Nichols* v. *White*, i. 58.
15. A deposition taken by *dedimus* may be in the hand-writing of the opposite party. *Ibid.*
16. The affidavit of the party is sufficient to prove the loss of papers. *Ibid.*
17. The plaintiff is not obliged to join in demurrer to evidence, unless the demurrer expressly admits every fact which the jury might reasonably infer from the testimony; but if the demurrer be joined, the Court will infer what the jury might infer. *Negro Patty* v. *Edelin*, i. 60.
18. On a trial for murder, the dying declarations of the deceased are evidence. *United States* v. *Mc Gurk*, i. 71.
19. Extorted confession is not evidence against the prisoner. *United States* v. *Pumphreys*, i. 74.
20. In an action against the indorser of a foreign bill of exchange for non-payment, it is not necessary to produce a protest for non-acceptance. *Hodgson* v. *Turner*, i. 74.
21. In an action of slander, if it appear from the plaintiff's evidence that at the time of speaking the words, the defendant named his author, who was a respectable man, the defendant may avail himself of that evidence without pleading the matter as a special justification. *Hogan* v. *Brown*, i. 75.
22. A witness who cannot testify in a cause without criminating himself, shall not be sworn. *Neale* v. *Coningham*, i. 76.

EVIDENCE, (*continued.*)

23. An entry in the defendant's books, not signed by any one, is not a sufficient note in writing, to take the case out of the statute of frauds. *Barry* v. *Law*, i. 77.
24. The record of a court in Virginia must be certified by the presiding magistrate. *Gardner* v. *Lindo*, i. 78.
25. The act of limitations cannot be given in evidence upon *nil debet*. *Ibid.*
26. A certificate in fee from the commissioners of the city of Washington, is not evidence of possession. *O'Neale* v. *Brown*, i. 79.
27. Upon a trial for larceny, the owner of the stolen goods is a competent witness in chief, upon filing with the clerk of the court, for the use of the prisoner, a release of the witness's right to one half of the fine which the court might impose. *United States* v. *Hare*, i. 82.
28. A subpœna *duces tecum* will not be ordered to a clerk of a court in Virginia, to bring here original papers filed in his court. *Craig* v. *Richards*, i. 84.
29. The obligee's indorsement of a payment on a bond, is not evidence to rebut the presumption of payment, unless made with the privity of the obligor. *Kirkpatrick* v. *Langphier*, i. 85.
30. The party's own books of account are not evidence in his favor, although in the handwriting of a deceased clerk, unless they contain the first entry of the charges. *Fendall* v. *Billy*, i. 87.
31. The record of a former judgment between the same parties upon the same cause of action, may be given in evidence upon *non assumpsit*. *Ridgeway* v. *Ghequier*, i. 87.
32. An instrument can be proved only by the subscribing witness, unless, &c. *Rhodes* v. *Riggs*, i. 87.
33. Upon application for naturalization, a deposition in 1802, "that the deponents have known the applicant since the year 1793 in New York," is not evidence that he was residing in the United States before the 29th of January, 1795. *Ex parte Tucker*, i. 89.
34. When the terms of submission to arbitration are uncertain, parol evidence may be given of the controversies submitted. *Davy* v. *Faw*, i. 89.
35. The plaintiff suing as assignee of a bankrupt, must produce the commission and proceedings, and deed of assignment. *McIver* v. *Moore*, i. 90.
36. A slave cannot be a witness if a free white person be a party. *Thomas* v. *Jamesson*, i. 91.
37. A slave may be a witness against a free mulatto in Alexandria. *United States* v. *Betty Bell*, i. 94.
38. On a trial for larceny of the goods of T. L., evidence that they were property of a deceased person, in the possession and under the management of T. L., will support the indictment. *United States* v. *Barlow*, i. 94.
39. The jury must believe or reject the whole of the prisoner's confession; but the offer of a bribe is evidence, independent of the confession. *Ibid.*
40. Comparison of handwriting is evidence to prove the publication of a libel. *Brooke* v. *Peyton*, i. 96.
41. Possession of the goods by the witness under one of the parties, is not such an interest in the event of the cause, as will render him incompetent. *Hamilton* v. *Russell*, i. 97.
42. Evidence of the defendant's confession will not dispense with the testimony of the subscribing witness. *Smith* v. *Carolin*, i. 99.
43. The declaration of a witness not on oath, may be given in evidence to discredit his testimony. *Harper* v. *Reiley*, i. 100.
44. Upon indictment for retailing spirituous liquors, the informer is not entitled to half of the penalty, and is a competent witness. *United States* v. *Voss*, i. 101.
45. The execution of a deed need not be proved by the witnesses if it be acknowledged and recorded. *Edmondson* v. *Lovell*, i. 103.

EVIDENCE, (*continued.*)
46. In assumpsit for goods sold, the defendant may prove a partnership between the plaintiff and the witness, by the witness. *Lovejoy* v. *Wilson*, i. 102.
47. On a count "for sundry matters properly chargeable in account," the plaintiff may give evidence of money lent; although no account be filed with or annexed to the declaration. *Ibid.*
48. Upon an indictment for stealing a check upon a bank, it is not necessary to produce the check itself in order to admit parol evidence that it was presented at the bank. *United States* v. *Wilson*, i. 104.
49. The informer is not entitled to half of the penalty upon a minister for marrying a woman under sixteen years of age, without the consent of her parents, &c., and is, therefore, a competent witness. *United States* v. *Mc Cormick*, i. 106.
50. The Court in Alexandria will not grant a commission to examine witnesses in a suit at common law without affidavit showing it to be necessary for the purposes of justice. *Sutton* v. *Mandeville*, i. 115.
51. On an indictment for murder, the declarations of the deceased, *in extremis*, and when sensible of approaching death, may be given in evidence as to facts, but not as to opinions. *United States* v. *Veitch*, i. 115.
52. Parol evidence will not be received to explain a written agreement, until it be first shown that the expressions are equivocal. *Auld* v. *Hepburn*, i. 122.
53. A demurrer which admits a fact in one cause is not evidence of that fact in another cause, although between the same parties. *Ibid.*
54. In assault and battery, on the plea of not guilty, the plaintiff is not bound to prove that the defendant struck or assaulted him first. But on the plea of *son assault demesne* the defendant must prove that the plaintiff assaulted him first. *Stevens* v. *Lloyd*, i. 124.
55. If there be a special agreement that the plaintiff's work should be measured and valued in a certain manner, the defendant will not be permitted to show that it was not worth as much as the value thus ascertained. *Evans* v. *Blakeney*, i. 126.
56. If the measurement and valuation were reduced to writing, parol evidence of the contents of that writing cannot be given unless the writing be lost or destroyed. *Ibid.*
57. The plaintiff's own oath is not evidence in any case, unless made within one year from the date of the articles charged. *Farrell* v. *Knap*, i. 131.
58. Upon a general *indebitatus assumpsit* for two hundred dollars for work and labor, there must be evidence of an express promise to pay a sum certain. *Ibid.*
59. A special agreement to do work at certain prices cannot be given in evidence upon general *indebitatus assumpsit*. *Ibid.*
60. The handwriting of a party cannot be proved by comparison with the handwriting of his power of attorney filed in the cause, there being no proof of the latter. *Shannon* v. *Fox*, i. 133.
61. The Court will not continue a cause because a commission to examine a witness has not been returned, unless the materiality of the testimony of the witness be shown by affidavit. *Morgan* v. *Voss*, i. 134.
62. In an action against A, who was surety for money advanced to B, the acknowledgments of B, as to receipts of money, may be given in evidence to charge A. *Ingle* v. *Collard*, i. 134.
63. In order to make the plaintiff's own affidavit evidence in support of an account where the dealings do not exceed ten pounds in one year, that affidavit must state that no security has been given for the debt, and must pursue exactly the form prescribed in the Act of Assembly of Maryland. *Rogers* v. *Fenwick*, i. 136.

EVIDENCE, (*continued.*)
64. If the landlord take the single bill of a third person, for the amount of the rent due by his tenant, and give time of payment to the third person until he fails, this is good evidence to support the plea of "no rent arrear." *Josse* v. *Shultz*, i. 135.
65. Leading questions may be asked in cross-examination. *Dawes* v. *Corcoran*, i. 137.
66. The plaintiff cannot recover upon a general *indebitatus assumpsit* if a special agreement be proved. *Krouse* v. *Deblois*, i. 138.
67. An unlawful act is evidence of an unlawful intent. *United States* v. *McFarland*, i. 140.
68. In debt against the sureties in a sheriff's official bond, his return that he had satisfied the plaintiff, is not evidence for the defendants. *Governor of Virginia* v. *Wise et al.* i. 142.
69. If the plaintiff produce the return as evidence of the receipt of the money by the sheriff, it is also evidence that he paid it to the plaintiff, it being so stated in the return. *Ibid.*
70. An account stated by the treasurer of a corporation aggregate, is evidence to charge the corporation. *Davis* v. *Georgetown Bridge Co.* i. 147.
71. A slave is not a competent witness in favor of a free mulatto upon a public prosecution. *United States* v. *Nancy Swann*, i. 148.
72. An attorney at law cannot be compelled to disclose any fact, the knowledge of which has been communicated to him by his client. *Murray* v. *Dowling*, i. 151.
73. A confession upon oath before a magistrate cannot be given in evidence against the prisoner. *United States* v. *Duffy*, i. 164.
74. Possession is *prima facie* evidence of property. *Ibid.*
75. Words accompanying actions may be given in evidence to show the intent. *United States* v. *Omeara*, i. 165.
76. The defendant's witnesses who were engaged in the riot, will not be permitted to give evidence of their intention in meeting. *United States* v. *Dunn et al.* i. 165.
77. An admission of facts, by a demurrer in one suit, is not evidence of the same facts in another suit between the same parties. *Auld* v. *Hepburn et al.* i. 166.
78. In an action at law by a seaman against the master, the plaintiff may read in evidence the answer of the master to a libel by the seamen for their wages, the plaintiff being one of the libellants. *Rambler* v. *Choat*, i. 167.
79. After the term in which a rule is laid on the plaintiff to give security for fees, the clerk, upon motion for judgment on the rule, need not prove the plaintiff to be a non-resident. *Devigny* v. *Moore*, i. 174.
80. In ejectment, the plats are part of the pleadings; in trespass, they are evidence only. *Pancoast* v. *Barry*, i. 176.
81. A person, interested in supporting a particular location, is not a competent witness to prove it. *Ibid.*
82. All locations, not counter-located, are admitted to be correct. *Ibid.*
83. Course and distance must yield to boundaries proved. *Ibid.*
84. A witness may be allowed his fees, although not regularly summoned. *United States* v. *Williams & Ray*, i. 178.
85. Bankruptcy of the plaintiff cannot be proved by parol. *Moore* v. *Voss*, i. 179.
86. If the original entries are lost, copies may be given in evidence. *Ibid.*
87. A general *indebitatus assumpsit* for goods sold and delivered, is not supported by evidence of a sale and delivery of goods under a special contract to sell and deliver certain specific goods at a certain price. *Talbot* v. *Selby*, i. 181.

EVIDENCE, (*continued.*)
88. The testimony of a subscribing witness may be dispensed with if he be absent from the country. *Jones* v. *Lovell*, i. 183.
89. Comparison of handwriting is not evidence. *Mc Cubbin* v. *Lovell*, i. 184.
90. If the jury after retiring, come into court to ask questions of a witness, the counsel will not be permitted to interrogate the witness. *United States* v. *Greenwood*, i. 186.
91. Malice may be given in evidence, in aggravation of damages in an action upon a bond conditioned to prove the plaintiff a bankrupt. *Sutton* v. *Mandeville*, i. 187.
92. Evidence cannot be given to show that the commissioners of bankruptcy erred in their judgment. *Ibid.*
93. The Act of Congress respecting the authentication of records of State courts does not apply to the records of the courts of the United States. *Mason* v. *Lawrason*, i. 190.
94. A copy of the proceedings of commissioners of bankrupt in England are not evidence under the Act of Virginia; because not recorded in England so as to make it evidence there. *Leay* v. *Wilson*, i. 191.
95. If the agent of the drawee of a bill write an order on the back of it, to another person to pay it, this order is evidence of the drawer's acceptance of the original bill. *Harper* v. *West*, i. 192.
96. Counsel may testify to facts not confidentially communicated to them by their clients. *Bank of Columbia* v. *French*, i. 221.
97. The maker of a note is a competent witness for the indorser. *Ibid.*
98. When the jury are to assess the fine, evidence may be given to them in mitigation. *United States* v. *Bartle*, i. 236.
99. In an action for enticing a servant, the declaration of the servant cannot be given in evidence. *Milburne* v. *Byrne*, i. 239.
100. One day's notice to an attorney at law, to take the deposition of a seafaring man, under the Maryland law of 1721, c. 14, § 3, is sufficient; but it cannot be read unless the witness is gone from the district. *Bowie* v *Talbot*, i. 247.
101. Although there be an agreement that the value of extra work should be ascertained by persons mutually chosen, yet if such valuation has not been actually made, the plaintiff in an action upon *quantum meruit*, may give other evidence of the value of the work. *Baker* v. *Herty*, i. 249.
102. The opinion of a witness, who has seen the party sign a paper, that another paper is also in the handwriting of the same party, is competent evidence, although his opinion is the result of comparison. *Hopkins* v. *Simmons*, i. 250.
103. In assault and battery for beating the plaintiff's servant, *per quod*, &c., the plaintiff cannot recover without evidence of loss of service. *Voss* v. *Howard*, i. 251.
104. A joint bill of parcels is not evidence of a joint sale. *Johnston* v. *Harris*, i. 257.
105. Upon a plea of tender, the plaintiff must prove that he produced and offered the money to the plaintiff. *Ladd* v. *Patten*, i. 263.
106. If the subscribing witness to a note be not within reach of the process of the Court, it is not necessary to produce him, or to prove his handwriting; but the defendant's handwriting may be proved. *Wellford* v. *Eakin*, i. 264.
107. An officer cannot justify under a *fieri facias* without producing it. *United States* v. *Baker*, i. 268.
108. The authority of an agent may be proved by the testimony of the agent himself. *Ibid.*
109. The owner of stolen goods is a competent witness after releasing to the United States his share of any fine which the Court may impose upon the prisoner. *United States* v. *Frank Tolson*, i. 269.

EVIDENCE, (*continued.*)
110. A stockholder in the bank is a competent witness for the prosecution on an indictment for receiving a stolen bank-note, the property of the bank; the witness having released to the United States all his interest in the fine. *United States* v. *Morgan*, i. 278.
111. Delivery of the cargo, to the owners, by the supercargo, is evidence of his receipt of his commissions, in an action against him by a third person who is entitled to a share of the commissions. *Manning* v. *Lowdermilk*, i. 282.
112. Upon the issue on the plea of infancy, in an action upon a promissory note, the plaintiff is not bound to produce the note at the trial. *Davidson* v. *Henop*, i. 280.
113. It is not necessary that the notice of taking a deposition under the Act of Congress should state the reason for taking it. *Debutts* v. *McCulloch*, i. 286.
114. Words spoken of one of the plaintiffs cannot be given in evidence to support an averment of words spoken of both plaintiffs; nor can words spoken by each defendant separately and out of the presence of each other, be given in evidence to support an averment of words spoken by the defendants jointly. *Davis* v. *Sherron*, i. 287.
115. A sentence of a foreign Court of Vice-Admiralty condemning a vessel as enemy's property, is not conclusive evidence of violation of neutrality. *Croudson* v. *Leonard*, i. 291.
116. Parol evidence cannot be admitted to vary or explain an unambiguous written agreement. *Ladd* v. *Wilson*, i. 293.
117. A deposition taken more than six months after replication in a chancery suit, cannot be read at the hearing, unless taken by consent, or by order of the Court, or out of the district. *Wiggins* v. *Wiggins*, i. 299.
118. Parol evidence may be given of the contents of a lost warrant. *United States* v. *Lambell*, i. 312.
119. Parol evidence cannot be admitted to prove the contents of a warrant, unless the loss of the warrant be proved. *United States* v. *Wary*, i. 312; *United States* v. *Long*, i. 373.
120. In an action for goods sold by Tibbs & Company, the plaintiffs must prove themselves to be that firm. *Tibbs et al.* v. *Parrott*, i. 313.
121. The wife of him whose goods were stolen is not a competent witness, unless the husband has released to the United States his share of the fine. *United States* v. *Shorter*, i. 315.
122. A confession made under the impulse of fear or the promise of favor, is not evidence; but facts discovered in consequence of such confession, are evidence. *United States* v. *Hunter*, i. 317.
123. Satisfaction to the owner of the goods stolen is admissible; but if made merely to avoid the inconvenience of imprisonment or of a trial, and not under a consciousness of guilt, it is not evidence against the prisoner. *Ibid.*
124. Slaves are competent witnesses for negroes indicted for assault and battery. *United States* v. *Negro Terry*, i. 318.
125. A mere honorary obligation to indemnify a prosecutor who is liable for costs, is not a sufficient interest to exclude the testimony of the witness. *United States* v. *Lyles*, i. 322.
126. The receipt of a bond of a third person "in part payment" of a preceding debt, is conclusive evidence of payment to that extent, although the obligor was insolvent when the receipt was given. *Muir* v. *Geiger*, i. 323.
127. The Court has power to send an attachment into Virginia for a witness, in a civil cause, who lives within one hundred miles of the place of trial. *Voss* v. *Luke*, i. 331.

EVIDENCE, (*continued.*)
128. To enable a party to read in evidence a deposition taken *de bene esse*, under the Act of Virginia, he must prove that the witness is unable to attend. *Jones* v. *Greenolds*, i. 339.
129. Outstanding judgments cannot be given in evidence upon *plene administravit*, but must be specially pleaded. *Hines* v. *Craig*, i. 340.
130. If there be judgment for one of several defendants upon demurrer to his separate plea of bankruptcy, he may be examined as a witness for the other defendants, upon executing a release of his interest in his estate. *Hurliki* v. *Bacon*, i. 340.
131. Infancy cannot be given in evidence upon *nil debet*. *Young* v. *Bell*, i. 342.
132. The Court will not compel a witness to testify against his interest, in a cause in which he is interested. *Carne* v. *McLane*, i. 351.
133. A deposition *de bene esse* cannot be read in evidence, if the witness lives within one hundred miles of the place of trial, although he lives out of the district. *Park* v. *Willis*, i. 357.
134. A deposition taken and filed by the defendant, may be read in evidence by the plaintiff, upon proof that the witness is beyond the jurisdiction of the Court. *Ibid.*
135. The admissions of one of several underwriters upon the same policy, cannot be given in evidence against another underwriter; nor the admissions of a committee of the company not authorized, by the articles of association, to make admissions. *Lambert* v. *Smith*, i. 361.
136. The plaintiff cannot give evidence that other underwriters on the same policy have paid upon the same risk. *Ibid.*
137. The Court will not receive parol evidence of the agreement of counsel respecting the admission of papers in evidence. *Ibid.*
138. The sentence and proceedings of a foreign court of vice-admiralty, condemning the goods as enemy-property, are not conclusive evidence of that fact in a suit on a policy of insurance. The sentence may be invalidated by the evidence contained in the record of the proceedings. *Ibid.*
139. In an action upon the case against the owner of a stage-coach, for taking away the plaintiff's slave, evidence may be given on the part of the defendant that the plaintiff had given the slave permission to seek a new master; and if such permission be without limitation of time or place, the plaintiff cannot recover. *Harrison* v. *Evans*, i. 364.
140. The defendant's office-keeper is a competent witness for the defendant, because he is equally liable to an action by the plaintiff and by the defendant. *Ibid.*
141. If, upon cross-examination, it appear that the witness is interested, the Court will instruct the jury that his testimony is not evidence. *Brohawn* v. *Van Ness*, i. 366.
142. A lease for ninety-nine years, not acknowledged and recorded, is not good for seven years, but is evidence of the rate of rent in an action for use and occupation. *Ibid.*
143. If a statute make it felony to steal the notes of any incorporated bank, that statute by which that bank was incorporated, thereby becomes a public statute. *United States* v. *Porte*, i. 369.
144. A free black man, born of a white woman, is a competent witness against a white man. *Minchin* v. *Docker*, i. 370.
145. Evidence that a black man has for many years publicly acted as a freeman, and has generally been reputed to be free, rebuts the presumption of slavery arising from color, and is evidence that he was born of a white woman. *Ibid.*
146. A slave is a competent witness for a free black man, on a criminal prosecution. *United States* v. *Shorter*, i. 371.

EVIDENCE, (*continued.*)
147. A witness is not competent to testify as to the similitude of handwriting, who has only seen, for a few minutes, papers acknowledged by the defendant to be in his handwriting. *United States* v. *Johnson*, i. 371.
148. Upon application for a bench-warrant on a charge of treason, as well as upon a motion to commit for the same cause, messages from the President of the United States to Congress may be read. *United States* v. *Bollman et al.* i. 373.
149. Upon trial of the issue upon the plea of performance, the plaintiff is not bound to produce the original covenant. *Beall* v. *Newton*, i. 404.
150. To prove a partnership, parol evidence of the contents of printed cards cannot be given, nor can evidence of general reputation of partnership. *Wilson* v. *Coleman*, i. 408.
151. Upon the issue of "no rent arrear," the landlord is not bound to prove that the distress was laid by his order. *McLaughlin* v. *Riggs*, i. 410.
152. Upon the trial of the issue upon the plea of "payment," the plaintiff is not bound to produce the bond. *Darlington* v. *Groverman*, i. 416.
153. Parol evidence cannot be received of the contents of a letter written by the defendant to a third person. *Richardson* v. *Peyton*, i. 418.
154. A bill of parcels receipted by the defendant is not, *per se*, evidence of an unexecuted contract to deliver the goods, but is *primâ facie* of a contract executed. *Ibid.*
155. The original entries in the handwriting of the deceased clerk, must be produced, a copy is not sufficient. *Ellicott* v. *Chapman*, i. 419.
156. A deed transferring a slave, in Maryland, not recorded, cannot be given in evidence, without proof of its execution, although acknowledged before a justice of the peace in Maryland. *Lucy* v. *Slade*, i. 422.
157. A deed of lands in Maryland, cannot be read in evidence, unless recorded in Maryland. *McIver* v. *Kennedy*, i. 424.
158. Under the Virginia law respecting the taking of depositions, notice to the attorney at law is not sufficient. *Wheaton* v. *Love*, i. 429.
159. If a subscribing witness has not been inquired for at the place to which he was last traced, evidence of his handwriting cannot be admitted. *Cooke* v. *Woodrow*, i. 437.
160. Parol evidence may be given to explain the terms of a submission to arbitrators. *Faw* v. *Davy*, i. 440.
161. Record evidence only, of a highway in Virginia, can be received. *United States* v. *King*, i. 444.
162. The defendant's book of accounts, in his own handwriting, is not evidence for him, although it contain the first entry. *Bennett* v. *Wilson*, i. 446.
163. If several persons, jointly concerned in an assault and battery, be separately indicted, each as for his own offence, and all tried at the same time by the same jury, one of the defendants may be examined as a witness for the others. *United States* v. *Hunter*, i. 446.
164. The Court will not permit the plaintiff to read to the jury his own statement of his account; nor will the Court permit the jury to take minutes of items of which no evidence is offered. *Crease* v. *Parker*, i. 448.
165. The party will not be permitted to give parol evidence of a cause of caption, of a deposition, different from the cause stated by the magistrate who took the deposition; and if that cause be insufficient, the deposition will be rejected. *Wheaton* v. *Love*, i. 451.
166. When a witness states the grounds of his belief of a material fact, his belief, together with the reasons of his belief, are proper evidence to be left to the jury. *Wilson* v. *McClean et al.* i. 465.
167. The rent-rolls and books of the Lord Proprietor of Maryland, may be given in evidence to supply the want of a deed, and may be explained by parol. *Contee* v. *Godfrey*, i. 479.

EVIDENCE, (*continued.*)
168. The plaintiff's clerk who puts a letter into the post-office, is a competent witness for the plaintiff without a release. *Dunlop* v. *Munroe*, i. 536.
169. Parol evidence is admissible to prove that A. B., before whom a deposition was taken, was a justice of the peace. *Ibid.*
170. It is to be presumed *primâ facie* that a sworn officer has discharged his duty faithfully. *Ibid.*
171. The Court will not grant a commission in a civil action at common law, to take the deposition of a witness living in Virginia, within one hundred miles of the place of trial; because he may be summoned to attend personally. *Wellford* v. *Miller*, i. 485.
172. The person in whose favor a letter of guaranty was given, may be examined as a witness for the plaintiff; his declarations, therefore, cannot be given in evidence. *Reid et al.* v. *Hodgson*, i. 491.
173. It is not necessary that the handwriting of the party should be proved by a person who has seen him write. *Ibid.*
174. A deposition taken, but not used by the plaintiff, cannot be read in evidence by the defendant, if the testimony would not have been competent for the defendant if it had been taken on his part. *Ibid.*
175. If the testimony of the subscribing witness cannot be had, evidence may be given of his handwriting, and of that of the maker of the instrument; and it is not necessary that the jury should, by the evidence, be satisfied of the handwriting of the subscribing witness, if they are satisfied as to that of the maker. *Cooke* v. *Neale*, i. 493.
176. The principal obligor, in a bond, is a competent witness for the surety. *Harper* v. *Smith*, i. 495.
177. An averment that the usurious contract was made in November, is supported by evidence that it was made in September. The variance is not material. *Ibid.*
178. In an action against an indorser of a promissory note, a record of a judgment upon the same note between other parties, cannot be given in evidence unless the note itself be produced, and the defendant's indorsement proved. *Welch* v. *Lindo*, i. 497.
179. Notice, to produce a book of account, given on the preceding evening, is sufficient when the counting-house of the party is near the court-house. *Shreve* v. *Dulany*, i. 499.
180. From the defendant's express promise to pay for the goods, the jury may infer that they were got by the order of the defendant. *Ibid.*
181. A former recovery may be given in evidence on *nil debit*. *Welsh* v. *Lindo*, i. 508.
182. A former recovery upon a count for goods sold and delivered, may be given in evidence in an action of debt upon a promissory note, with an averment that the judgment was confessed in the former action, upon the note now declared upon. *Ibid.*
183. An execution is not the best evidence of a judgment. *Smallwood* v. *Violett*, i. 516.
184. Free-born negroes, not subject to any term of servitude by law, are competent witnesses in all cases. Color alone is no objection to a witness. *United States* v. *Mullany*, i. 517.
185. A slave is not a competent witness against a free-born mulatto not subject to any term of servitude by law. *United States* v. *Peggy Hill*, i. 521.
186. Possession of tobacco notes is evidence of possession of the tobacco which they represent. *Hance* v. *Mc Cormick*, i. 522.
187. The affidavit of a manumitted negro is a sufficient ground for an order to issue a summons returnable immediately, upon a petition for freedom. *Negro Nan* v. *Moxley*, i. 523.

EVIDENCE, (*continued.*)
188. The Court will not permit a party to prove other fraudulent transactions of the other party with strangers, to corroborate the charge of fraud in the present case. *Jones et al.* v. *Knowles*, i. 523.
189. If the notary testifies that he is certain from the memorandum in his book, that the demand was made as there stated, his testimony is competent evidence to the jury. *Thornton* v. *Caldwell*, i. 524.
190. Witnesses may be examined each out of the hearing of the others. *Joice* v. *Alexander*, i. 528.
191. The reputation of freedom which may be given in evidence upon a trial of freedom, must be a reputation among free white persons who are dead, or whose death may be presumed. *Ibid.*
192. The deposition of a deceased person, taken in another cause, may be read as hearsay. *Ibid.*
193. The Superintendant of Washington City is a competent witness for the plaintiffs in a suit brought in the names of the former commissioners, to whose rights and duties he has succeeded. *Thornton* v. *Stoddert*, i. 534.
194. If a notary-public produces his book containing his memorandum of demand, and testifies that he made it at the time, and that he is sure that it is correct, and has not been altered; this is competent evidence, to the jury, of the demand; although he has no recollection of the act of demanding. *Ibid.*
195. If the defendant take and return the deposition of an interested witness, he cannot object to its being read on account of the interest of the witness. *Quære?* *Henry* v. *Ricketts et al.* i. 545.
196. If the Court be equally divided on an objection to evidence, the objection does not prevail. *Ibid.*
197. At the hearing of a cause in chancery, the Court will not receive *viva voce* testimony, unless to prove exhibits. *Debutts* v. *Bacon*, i. 569.
198. A creditor of a firm is a competent witness to prove its existence. *Bank of Alexandria* v. *Mandeville*, i. 575.
199. The wife of one of the defendants is not a competent witness for the plaintiff, although her husband has been discharged under the insolvent act. *Ibid.*
200. A stockholder in a company, who holds stock in the plaintiffs' bank, is a competent witness for the plaintiffs. *Ibid.*
201. The record of other suits between the defendant and other plaintiffs, cannot be read in evidence by the plaintiffs to show fraud in the dissolution of the partnership. *Ibid.*
202. If the drawer and payee of a check upon a bank reside in the town wherein the bank is, and the drawer be insolvent, the jury cannot in law infer from those facts that the plaintiffs had used due diligence in demanding payment, and giving notice to the defendant. *McKinder* v. *Dunlap*, i. 584.
203. The mother of a bastard is a competent witness for the United States upon an indictment of the supposed father, under the Maryland Act of 1781, c. 13. *United States* v. *Collins*, i. 592.
204. Evidence of the likeness of the child to its supposed father is not admissible. *Ibid.*
205. The confession of the supposed father of a bastard having been given in evidence, the defendant was not permitted to give in evidence his declarations at the same time that others also had connection with the mother. *Ibid.*
206. A request, by the indorser of a note, to the holder, to push the maker, is not a waiver of demand and notice, but is evidence from which the jury may infer due demand and notice. *Riggs* v. *St. Clair*, i. 606.

EVIDENCE, (*continued.*)
207. The drawee of a forged draft is a competent witness to support the prosecution. *United States* v. *Bates*, ii. 1.
208. The declarations of an ancestor, while held as a slave, cannot be given in evidence.
Declarations of deceased persons, that the ancestor was free, may be given in evidence to show that the ancestor was, in fact, free; that is, not held in slavery. *Negro Priscilla Queen* v. *Neale*, ii. 3.
209. A free-born negro is a competent witness in a case of freedom. *Mima Queen* v. *Hepburn*, ii. 3.
210. The testimony of a subscribing witness cannot be dispensed with, although he resides in Massachusetts. *Whann* v. *Hall*, ii. 4.
211. See BILLS AND NOTES, 2, 4. *Bank of Alexandria* v. *Wilson*, ii. 5.
212. In assault and battery, the plaintiff's counsel cannot ask his witness "Who printed the hand-bill?" and "Where was it printed?" because the questions were too general, not showing any agency of the defendant. *Snowden* v. *McGuire*, ii. 6.
213. The indorsement by the plaintiffs, and delivery of the note to a third person so indorsed, is *prima facie* evidence that it was so transferred for value received, and throws the burden of proof on the plaintiffs to show that it has been retransferred, or was indorsed for collection, or that they had repaid the money. *Veitch & Co.* v. *Basye*, ii. 6.
214. In a suit by the trustee of an insolvent debtor, a creditor of the insolvent is not a competent witness. *Herbert* v. *Finley et al.* ii. 12.
215. On a prosecution for keeping a bawdy-house, the United States cannot give evidence of the general reputation of the house. *United States* v. *Polly Rollinson*, ii. 13.
216. The burden of proof of the want of consideration of a written promise is on the defendant. *Watson* v. *Dunlap*, ii. 14.
217. Upon the issue of "no rent arrear," the plaintiff in replevin will not be permitted to prove that the defendant "had nothing in the tenements." In replevin for goods distrained for rent, the defendant cannot give evidence of the value of the use and occupation. *White* v. *Cross*, ii. 17.
218. In slander, the defendant may, in mitigation of damages, give evidence of the grounds of his belief of the truth of the charge which was made. *Cooke* v. *O'Brien*, ii. 17.
219. If a colored man was born a slave, his being permitted to go at large without any restraint, and to act as a freeman, is no evidence of his being free. *Bell* v. *Hogan*, ii. 21.
220. If the plaintiff's freedom was not so notorious that the defendant might be presumed to know it, the defendant is not liable for damages for taking up the plaintiff as a runaway, he being a colored man, and *prima facie* a slave. *Ibid.*
221. A record of recovery of freedom by the female ancestor of the petitioner, on the ground of her having been born free, may be given in evidence to support the petitioner's title, although the present defendant was not a party to that record; and the depositions of deceased witnesses contained in that record may be read as hearsay to prove pedigree. A party producing a record in evidence is not obliged to read the whole of it; but the opposite party may read it. *Davis* v. *Forrest*, ii. 23.
222. Particular acts of turpitude cannot be given in evidence to discredit a witness; the only question is as to his general character for veracity. *Ibid.*
223. Upon the issue of *plene administravit*, a surety in the administration bond is a competent witness for the defendant. *Fairfax* v. *Fairfax*, ii. 25.
224. If the defendant offer evidence of the payment of the testator's bond, he need not prove its execution by the subscribing witnesses. *Ibid.*
225. Bills purchased and remitted to pay a foreign debt, may be given in evidence

EVIDENCE, (*continued.*)
as payment, if purchased and remitted before service of the writ on the defendant. *Ibid.*
226. The confession of a prisoner taken on oath, cannot be used against him at the trial. *United States* v. *Bascadore*, ii. 30.
227. See DEPOSITION, 24. *Vasse* v. *Smith*, ii. 31.
228. In a joint action of trespass against two defendants, if they plead severally, they may be mutually examined as witnesses for each other. *Quære. Piles* v. *Plum & Swann*, ii. 32.
229. In trespass one defendant cannot be a witness for the other in a joint action, although they plead severally. *Johnston* v. *Chapman et al.* ii. 32.
230. Parol evidence cannot be given of a transfer in writing, without proof of the loss of the writing, or otherwise accounting for its non-production. *Wilson* v. *Young*, ii. 33.
231. A surety in a replevin bond is not a competent witness for the plaintiff in replevin, although he has an indemnifying bond. *Thompson* v. *Carbery*, ii. 35.
232. In a criminal case parol evidence may be given to explain the intention with which a deed was made, and to prove that although it purported to convey a negro to the grantee, his executors and administrators forever, the grantor intended to convey only his own title. *United States* v. *Thomas*, ii. 36.
233. An indorser is a competent witness for the maker of a note to prove that the indorsement was without consideration, and to give credit to the note; but the payee is not a competent witness for the plaintiff. *Gilman* v. *King*, ii. 48.
234. See BILLS AND NOTES, 66, 67. *Bank of Alexandria* v. *Young*, ii. 52.
235. See DEPOSITION, 25. *Miller* v. *Young*, ii. 53.
236. See BARRATRY. *United States* v. *Porter*, ii. 60.
237. The person defrauded is a competent witness for the prosecution upon an indictment for the fraud. *Ibid.*
238. A witness is incompetent who has been convicted of a conspiracy to defraud the creditors of an insolvent debtor. *Ibid.*
239. A grand juror may be required to testify as to the evidence given before the grand jury. *Ibid.*
240. Upon an indictment for taking usury, the borrower is a competent witness for the prosecution, if he has paid the money, and be not the informer. *United States* v. *Moxley*, ii. 64.
241. See ADMINISTRATION, 12. *Thompson* v. *Afflick*, ii. 67.
242. The contents of a warrant cannot be proved without producing it, or accounting satisfactorily for its non-production. *United States* v. *Chenault*, ii. 70.
243. The jury may presume payment of an instalment payable 19 years and 10 months before suit brought. *Miller* v. *Evans*, ii. 72.
244. See DEPOSITION, 26. *House* v. *Cash*, ii. 73.
245. Upon a motion to exonerate bail, the Court will not receive evidence of fraud in the principal in contracting the debt. *Burns* v. *Sim's bail*, ii. 75.
246. A slave is not a competent witness against a free black person in a capital case; but free blacks, unless they are in a state of servitude by law, are competent witnesses against free blacks. *United States* v. *Minta Butler*, ii. 75.
247. The contents of a written notice cannot be given in evidence unless notice has been given to the party to produce it. *Underwood* v. *Huddlestone*, ii. 76.
248. Confessions made under the influence of hope or fear, cannot be given in evidence. *United States* v. *Negro Charles*, ii. 76.
249. Grand Jurors may testify as to the confessions made by the prisoner on oath, when under examination as a witness against another person.

EVIDENCE, (*continued.*)
Subsequent confessions, after having confessed under the influence of hope or fear, cannot be given in evidence. *Ibid.*
250. In an action of debt upon an inquisition taken under the charter of the Georgetown and Alexandria Turnpike Company, the defendants, upon *nil debet*, may give evidence of fraud or partiality, or irregularity on the part of the jurors who took the inquest, but the jurors themselves cannot be examined of each others conduct.
It is necessary that all the jurors sworn should agree in the inquest. *Custiss* v. *Georgetown & Alexandria Turnpike Company*, ii. 81.
251. In an action by the indorsee against the indorser of a promissory note, the maker is a competent witness to prove the contract usurious, unless he is interested. *Knowles* v. *Parrott*, ii. 93.
252. A free born mulatto is a competent witness against a white person. *United States* v. *Douglass*, ii. 94.
253. An informal instrument of manumission, accompanied by an actual manumission of the defendant before the commission of the offence charged, followed by a formal deed of manumission, after the commission of the offence, is sufficient evidence that the defendant was not a slave at the time of committing the offence. *United States* v. *Negro Jacob Bruce*, ii. 95.
254. An account for work and labor cannot at the trial be given in evidence upon *non assumpsit*, as a set-off, unless the account has been filed, and notice given. *Whetcroft* v. *Burford*, ii. 96.
255. New evidence cannot be given upon appeal from the Orphans' Court. *Gittings* v. *Burch*, ii. 97.
256. See COSTS, 31. *Williams* v. *Hopkins*, ii. 98.
257. The principal obligor having confessed judgment, and having been released by the defendant from the costs of this suit, is a competent witness for the defendant to prove the bond usurious. *Peirce* v. *Reintzel*, ii. 101.
258. A defendant in equity is a competent witness upon an indictment against the plaintiff in equity, for perjury in his affidavit to obtain an injunction. *United States* v. *Burford*, ii. 102.
259. The declaration of the prisoner as to his intentions as to any of the overt acts of treason charged in the indictment may be given in evidence before evidence offered of such overt acts. *United States* v. *Lee*, ii. 104.
260. When the subscribing witnesses to a bond reside in a foreign country, evidence of the handwriting of the obligor and subscribing witnesses will be left to the jury as *prima facie*, but not conclusive evidence, upon the issue of *non est factum*. *Davies* v. *Davies*, ii. 105.
261. The Court will not, at the trial, compel the plaintiff to produce a charter-party, of which the defendant has a counterpart, without previous notice; nor permit the defendant to give it in evidence without proof by the subscribing witness.
The captain's protest may be given in evidence to corroborate his testimony. *Sampson* v. *Johnson*, ii. 107.
262. *Quære*, whether a free colored man is a competent witness in a cause between white persons. *O'Neale* v. *Willes*, ii. 108.
263. A colored person who has been made free under the Maryland Act of 1796, ch. 67, is not a competent witness against a white man. *United States* v. *Minifie*, ii. 109.
264. Upon an indictment for selling a free person as a slave, under the Maryland law of 1796, c. 67, parol evidence may be given of the contents of papers delivered by the witness to the defendant, without a previous notice to produce them. *United States* v. *Carrico*, ii. 110.
265. Parol evidence cannot be given of the contents of a letter from the notary public to the defendant, and put into the post-office, without notice to the defendant to produce it. *Bank of Washington* v. *Kurtz*, ii. 110.

EVIDENCE, (*continued.*)
266. In trespass, when the defence is on warrant, the plaintiff is not permitted to give evidence of trespasses at a place not located on the plats; nor outside of the plaintiff's lines as located by him on the plats, although, by his title he had a right to locate them so as to include the place where, &c. The plaintiff is bound by his location, and cannot claim land not included therein.
The plaintiff cannot recover unless he was in possession of the land at the time of the alleged trespass. *Holmead* v. *Corcoran*, ii. 119.
267. The Court will not receive evidence of the declarations of jurors that they assessed the damages by taking the average of the sums put down by each juror respectively. *Ibid.*
268. See DEPOSITION, 25. *Peyton* v. *Veitch*, ii. 123.
269. The caption of the deposition must name all the parties in the suit. *Ibid.*
270. See ADMINISTRATION, 12. *Croig* v. *Reintzel*, ii. 128.
271. A copy, from the records, of a deed of personal property, which derives no validity from being recorded, is not competent evidence. *Ormsby* v. *Tingey*, ii. 128.
272. See BIGAMY, 2, 3, 4, 5. *United States* v. *Lambert*, ii. 137.
273. See CONTRACT, 18. *Somers* v. *Tayloe*, ii. 138.
274. Parol evidence may be given to show that the parties named in a written contract were agents of other persons who were the real contracting parties. *Ibid.*
275. Naturalization cannot be proved by parol. *Slade* v. *Minor*, ii. 139.
276. In an action upon the Statute of Virginia for carrying away the plaintiff's slave, evidence will not be permitted to prove that the slave had hired himself as a free man to another master of a vessel in a previous voyage. *Washington* v. *Wilson*, ii. 153.
277. See ATTACHMENT, 43. *Ricketts* v. *Henderson*, ii. 157.
278. See DEPOSITION, 27. *Traverse* v. *Bell*, ii. 160.
279. In an action upon a replevin-bond, it seems that the defendant may, in mitigation of damages, give evidence that he was cheated at cards by the plaintiff, whereby the plaintiff won the defendant's mare which was the subject of the replevin. *McDaniel* v. *Fish et al.* ii. 160.
280. In an action against James and Robert charging them as copartners, upon bills drawn by James in his own name, but for the benefit of the partnership, James cannot be examined as a witness for Robert upon an issue joined by Robert alone, although judgment should have been rendered against James by default. *Nicholson* v. *Patton*, ii. 164.
281. See CHARTER-PARTY, 2. *Bowie* v. *Wheelwright*, ii. 167.
282. In a suit between contending mortgagees, the mortgagor is a competent witness for the first mortgagee, to identify the goods described in the first mortgage. *Wagner* v. *Watts*, ii. 169.
283. See DEPOSITION, 28. *Garrett* v. *Woodward et al.* ii. 190.
284. A witness who is interested cannot be compelled to testify against his interest. *Pritchard* v. *Corporation of Georgetown*, ii. 191.
285. See DEPOSITION, 34. *Thorpe* v. *Simmons*, ii. 195.
286. *Id.* 29. *Centre* v. *Keene*, ii. 198.
287. The making of a promissory note can only be proved by the subscribing witness, if there be one; evidence of the confession of the maker that he owes part of it is not sufficient upon the money counts. *Turner* v. *Green et al.* ii. 202.
288. See BILLS AND NOTES, 87. *Gaither* v. *Lee*, ii. 205.
289. An old entry in a memorandum book of a deceased person stating the ages of the several members of his family, may be given in evidence to prove the age of a witness. *Negro Clara* v. *Ewell*, ii. 208.
290. See COPYRIGHT, 1. *King* v. *Force*, ii. 208.

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291. See DEED, 5. *Milligan* v. *Mayne*, ii. 210.
292. In executing a writ of inquiry, in Alexandria, D. C., the plaintiff's own affidavit may be read in evidence of the amount of damages. *Keene* v. *Cooper*, ii. 215.
293. See AFFIDAVIT, 7. *Mills* v. *Wilson*, ii. 216.
294. See BILLS AND NOTES, 3. *Mechanics' Bank* v. *Taylor*, ii. 217.
295. The lapse of nine years since the plaintiff arrived at the age of twenty-one does not create a presumption that the oath required by the Virginia law was taken by the person who imported the plaintiff. *Negro Reeler* v. *Robinson*, ii. 220.
296. See DEPOSITION, 30, 31, 32. *Edmondson* v. *Barrell*, ii. 228.
297. A baker's tallies may be produced in evidence, after calling upon the defendant to produce his counterpart. *Travers* v. *Appler*, ii. 234.
298. See DEPOSITION, 33. *Woodward* v. *Hall*, ii. 235.
299. The amount of the costs of a suit in New York may be proved by parol. *Ibid.*
300. Length of time does not raise a presumption against a slave that his owner took the oath required by law. *Negro Jack Garretson* v. *Lingan*, ii. 236.
301. See DEPOSITION, 35, 36. *Smith* v. *Coleman*, ii. 237.
302. If the defendant call upon the plaintiff to produce a certain account at the trial; and, if produced, refuse to read it in evidence, the plaintiff cannot read it to the jury because called for by the defendant. *Ibid.*
303. The defendant in replevin who justifies under an execution directed to him as constable, if indemnified by the plaintiff in the execution, having no other interest than the possibility of receiving commissions and fees upon an execution which may be issued again in the same cause, is a competent witness for the defendant. *Wise* v. *Bowen*, ii. 239.
304. When an issue is sent from the Orphans' Court to be tried in this Court, and is accompanied by the libel and answer, they may be read in evidence at the trial of the issue. *Evans* v. *Evans*, ii. 240.
305. A free colored man who has resided in this district eight years, and publicly acted as a free man, and so generally reputed to be, is a competent witness for the United States against a free colored person. *United States* v. *Negro Jack Neale*, ii. 241.
306. If a person, knowing the contents of a forged letter, and with intent to obtain money thereupon, deliver it, although sealed, to the clerk of the person to whom it is addressed, and who, he supposes to be authorized to open it, this is evidence of uttering it. *United States* v. *Carter*, ii. 243.
307. See BILLS AND NOTES, 95. *Whittemore* v. *Herbert*, ii. 245.
308. A witness in a criminal cause may be compelled to answer a question which he says, upon his oath, that he cannot answer without disclosing a fact which may be material and important evidence to criminate himself as participator in the same offence for which the defendant stands indicted, provided the Court should be of opinion that no direct answer to the question could furnish evidence against the witness. *United States* v. *Miller*, ii. 247.
309. See BILLS AND NOTES, 96, 97, 98. *Bank of Washington* v. *Way*, ii. 249.
310. *Id.* 99. *Brown* v. *Piatt*, ii. 253.
311. See DEPOSITION, 39. *Van Ness* v. *Heineke*, ii. 259.
312. See CONTINUANCE, 21. *Bestor* v. *Sardo*, ii. 260.
313. The answer to a bill in equity so far as it is responsive to the allegations of the bill, is conclusive evidence, unless contradicted by two witnesses. *Harper* v. *Dougherty*, ii. 284.
314. See BILLS AND NOTES, 102. *Bank of Washington* v. *Reynolds*, ii. 289.
315. It is not competent for the plaintiff to give evidence of the defendant's acknowledgment of the receipt of the goods mentioned in a certain account

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which had been delivered to the defendant, without having first given notice to produce it. *Nicholls* v. *Warfield*, ii. 290.
316. See CONFESSION, 6. *United States* v. *Pocklington*, ii. 293.
317. If forged papers be inclosed and sealed up in a letter written in Tennessee, and there directed to the Paymaster-General in Washington, and sent by mail with intent to defraud the United States, and the letter be received by the Paymaster-General in Washington; this is not an uttering and publishing of the said forged papers in the county of Washington. *United States* v. *Wright*, ii. 296.
318. A witness is not bound to answer a question, if it shall appear to the Court that the answer would have a probable tendency to criminate the witness. *United States* v. *Lynn*, ii. 309.
319. The contents of a written paper cannot be proved by parol, unless the paper be lost or destroyed. *Ibid.*
320. See DEPOSITION, 40. *Boone* v. *Janney*, ii. 312.
321. One of two joint owners of a vessel is a competent witness to prove a joint claim against a passenger in the vessel, for the passage-money, if the other joint owner has given him credit, in account, for his share of the passage-money, and a release of a claim to recover it back, in case he should not get it from the passenger. *Massoletti* v. *Miller*, ii. 313.
322. In a joint action upon a promissory note, if one of the defendants suffer judgment to go against him by default, and if a writ of inquiry be executed, he is not a competent witness upon the issue joined by the other defendant. *Franklin Bank* v. *Hopkins et al.* ii. 315.
323. An averment of a demise from year to year for three years at $120 a year, is not supported by evidence of a demise from year to year for two years at $120 a year and for one year at $120 a year. *Dorsey* v. *Chenault*, ii. 316.
324. See DEMURRER, 19. *Bank of the United States* v. *Smith*, ii. 319.
325. See DAMAGES, 9. *Turner* v *Foxall*, ii. 324.
326. See BILLS AND NOTES, 118. *Gassaway* v. *Jones*, ii. 334.
327. See DEPOSITION, 41, 42. *Thorp* v. *Orr*, ii. 335.
328. Before secondary evidence of a written instrument can be given, the Court must be satisfied by the affidavit of the party offering it, or otherwise, that the supposed original paper did once exist, and that it is not in his power to produce it. *Maye* v. *Carbery*, ii. 336.
329. See DEPOSITION, 43. *Humphries* v. *Tench*, ii. 337.
330. A copy of a regimental paymaster's account as settled by the accounting officers of the Treasury, certified according to the Act of March 3d, 1817, is competent evidence, to the jury, of the balance due by the paymaster to the United States. *United States* v. *Van Zandt*, ii. 338.
331. A copy of a paymaster's bond, certified according to the act "to provide more effectually for the settlement of accounts between the United States and receivers of public money, is competent evidence." *Ibid.*
332. The plaintiff cannot be non-suited for not producing books and papers upon a mere notice by the defendant to produce them at the trial; there must be a motion to the Court for an order to produce them, and notice of such a motion, and an order of the Court; and if the motion be not made until the cause be called for trial, at the last calling of the docket, the Court will continue the cause until the next term. *Bank of the United States* v. *Kurtz*, ii. 342.
333. A person, relying on the proviso in the Virginia law in favor of persons coming to reside in Virginia, and bringing their slaves with them, and taking a certain oath, must produce competent evidence to prove that the terms and provisions of the proviso, had been complied with; and in the absence of all testimony no presumption can arise from lapse of time

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to supply the defect of such testimony. *Negro Matilda* v. *Mason et al.* ii. 343.
334. The statute-book of one of the States, purporting to be published by authority of its Legislature, and deposited in the Department of State of the United States, under an Act of Congress, requiring the Secretary of State to obtain copies of the laws, is admissible evidence of the laws of such States, in the courts of the District of Columbia; and it is not necessary that such statute-book should be authenticated according to the provisions of the Act of Congress of the 26th of May, 1790. *Commercial and Farmers Bank, Baltimore*, v. *Patterson*, ii. 346.
335. According to the laws of Pennsylvania, the equity follows a promissory note into the hands of an indorsee, unless dated at Philadelphia, and made payable "without defalcation." The words "without defalcation," do not prevent the maker of a Pennsylvanian note from showing fraud in the payee in obtaining the note. *Ibid.*
336. See BILLS AND NOTES, 119, 120, 121. *Ibid.*
337. *Id.* 122. *Ott* v. *Jones*, ii. 351.
338. In the election of a mayor, in Washington, the return of the commissioners is not conclusive, but *prima facie* evidence that the votes were good. Parol evidence is competent to show that all the commissioners were present. *United States* v. *Carbery*, ii. 358.
339. An insolvent debtor is bound to produce and surrender all his evidences of debt. *Ex parte Henry Hadry*, ii. 364.
340. If an agreement in writing be made by one of the partners of a mercantile firm, it is competent for the plaintiffs, in an action in the name of the members of the firm, to prove, by parol, that it was made by that partner as the agent, and for the use and benefit of the firm. *Hutchinson et al.* v. *Peyton et al.* ii. 365.
341. The fact, that insurance was made, cannot be proved without producing the policy, or showing it to be lost. *Ibid.*
342. A contractor's account, adjusted by the proper accounting officers of the Treasury; and certified and authenticated according to the eleventh section of the Act of March 3, 1817, c. 45, is evidence, not only of money advanced to the contractor, but of money disbursed by officers of the army for provisions, in consequence of the contractor's failing to comply with his contract. *United States* v. *Griffith*, ii. 366.
343. The Third Auditor is not authorized to authenticate copies of bonds and other papers. His power, under the Act of March 3, 1817, extends only to "transcripts from the books and proceedings of the Treasury in regard to the accounts of the War Department." Copies of bonds must still be certified by the register, and authenticated under the seal of the department, under the Act of the 3d of March, 1797. *Ibid.*
344. The person intended to be injured by a forgery, and the person whose name is forged, are competent witnesses to prove the forgery. But if the witness has paid money upon the forged paper, he is not competent to prove the forgery. *United States* v. *Crandell*, ii. 373.
345. The Court will not compel a party to join in a demurrer to the evidence, unless the other party will admit all such facts as might be fairly inferred from the evidence. *Negro William Jordan* v. *Sawyer*, ii. 373.
346. See ARBITRATION, 10, 11, 12. *Goldsborough* v. *Mc Williams*, ii. 401.
347. A person who has given a receipt for goods to be delivered to a third person, is a competent witness for the United States upon a prosecution of another person for stealing the goods. *United States* v. *Bates*, ii. 405.
348. See BILLS AND NOTES, 128. *Farmers Bank* v. *Lloyd*, ii. 411.
349. Although a confession, made under a promise of favor, is not, of itself, evidence against a prisoner; yet the fact of the prisoner's going to the place

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where the property was secreted and identifying it, is evidence against him. *United States* v. *Negro Richard*, ii. 439.
350. See DEPOSITION, 44. *Renner* v. *Howland*, ii. 441.
351. If evidence be given on both sides, and be complicated, the Court will not compel the plaintiff to join in demurrer, nor will they undertake to say what facts the party offering to demur, ought to admit as inferences from the evidence; nor will they compel the other party to join in the demurrer upon his offering to admit all the inferences which the Court should say the jury could reasonably infer from the evidence. *Stuart* v. *Columbia Ins. Co.* ii. 442.
352. Unless notice of set-off be given before the suit is called for trial, it cannot be given in evidence upon non assumpsit. *Deneale* v. *Young*, ii. 418.
353. See DEPOSITION, 45. *Bussard* v. *Catalino*, ii. 421.
354. See ADMINISTRATION, 12. *Burch* v. *Spalding*, ii. 422.
355. A witness will be permitted to refresh his memory as to the items of an account for work and labor, by the original entries only, made by himself or by another in his presence; and although he has no distinct recollection of each particular item charged, yet, if he has a distinct recollection of such work as is charged in the account, generally, being done, and, after having refreshed his memory, if he can swear that the work was done as charged in such account, his testimony will be competent evidence. *Jones* v. *Johns*, ii. 426.
356. See BOOKS AND PAPERS, 4. *Central Bank* v. *Tayloe*, ii. 427.
357. When the assignment of the time of service of a servant is in writing, parol evidence of a promise that the servant had a certain time to serve, cannot be admitted. *Smallwood* v. *Worthington*, ii. 431.
358. See CORPORATION, 10. *Rockville & Washington Turnpike* v. *Van Ness*, ii. 449.
359. *Id.* 15. *Rockville & Washington Turnpike* v. *Andrews*, ii. 451.
360. Terms offered by way of compromise cannot be given in evidence to rebut the statute of limitations. *Ash* v. *Hayman*, ii. 452.
361. See BILLS AND NOTES, 134. *Knowles* v. *Stewart*, ii. 457.
362. See AGENT, 13. *Davis* v. *Robb*, ii. 458.
363. In an action against a surety in a prison-bounds bond, the defendant will not be permitted to produce evidence that the principal (the debtor) was insolvent, and, therefore, the plaintiff sustained no damage. *Smoot* v. *Lee*, ii. 459.
364. See ATTORNEY, 6. *Crittenden* v. *Strother*, ii. 464.
365. In an action by the indorsee against the maker of a promissory note, the indorser is a competent witness for the plaintiff, (without a release,) to prove the acknowledgment of the debt, so as to take the case out of the statute of limitations. *Bank of Alexandria* v. *Clarke*, ii. 464.
366. The owner of the goods stolen, after having released to the United States, and to the prisoner, all his interest in the fine, is a competent witness for the United States, and may be examined generally. *United States* v. *Carnot*, ii. 469.
367. The Court will not permit evidence to be given of the private opinion of the witness as to the fraud or fairness of the plaintiff's conduct, derived from facts which appeared before the witness as an arbitrator. *Zantzinger* v. *Weightman*, ii. 478.
368. The *ex parte* deposition of a deceased witness, not taken by consent, cannot be read in evidence. *Ibid.*
369. A claim which has been pleaded, or offered in evidence, as a set-off, and rejected by the verdict of the jury, will not maintain an action. *Janney* v. *Smith*, ii. 499.
370. Upon the trial of an indictment for offering a bribe to a witness, the previ-

EVIDENCE, (*continued.*)
ous declarations of the defendant, as to his motives for offering it, cannot be given in evidence by the defendant. *United States* v. *Milburn*, ii. 501.
371. A witness before the grand jury is bound to answer a question, although he make oath that he cannot answer it without criminating himself. *United States* v. *Devaughn*, ii. 501.
372. The collector's books, in the handwriting of a deceased clerk, are evidence for the United States. *United States* v. *Howland*, ii. 508.
373. The books of a bank which do not show whether the checks drawn upon it were payable to bearer or to order, nor the names of the persons in whose favor they were drawn, are not evidence of money paid to any particular person. *Boyd* v. *Wilson*, ii. 525.
374. If three persons be jointly indicted for a riot, and one only be put upon his trial, the other two, having forfeited their recognizances, cannot be examined as witnesses for the defendant. *United States* v. *Rutherford*, ii. 528.
375. When evidence is offered of what a deceased witness testified at a former trial of the same cause, that evidence must be of the very words of the deceased witness. *Bennett* v. *Adams*, ii. 551.
376. If the clerk who made the original entries in the testator's books, be made executor, those entries are competent evidence in an action by the executor for goods sold and delivered by the testator to the defendant. *Hodge* v. *Higgs*, ii. 552.
377. In an action by the indorsee of a promissory note against the maker, upon the plea of limitations, evidence that the note within the last three years before the commencement of the suit, was presented to the defendant, who acknowledged it to be his note, and that it had not been paid, and said that the note had been of long standing, and that he should resist payment, but offered terms of compromise which were not accepted, is evidence of such an acknowledgment of the debt as takes it out of the statute. *Rhodes* v. *Hadfield*, ii. 566.
378. On the trial of an issue upon allegations, under the insolvent act, the burden of proof is on the complaining creditors to show the fraudulent intent. *Ex parte Henry Knowles*, ii. 576.
379. The authority of a justice of the peace, in one of the States, may be proved by parol. *Winter* v. *Simonton*, ii. 585.
380. See AFFIDAVIT, 11. *Ibid.*
381. See ANSWER, 3, 4. *Robinson* v. *Cathcart*, ii. 590.
382. The bill of lading is not conclusive evidence of an express agreement as to the price of the freight. *Simmes* v. *Marine Ins. Co.* ii. 618.
383. The bond for conveyance of the vessel by the builder to the plaintiff, was not conclusive that the ownership, so far as the freight was concerned, was in the builder at the time of the insurance. *Ibid.*
384. See BILLS AND NOTES, 153, 154, 155. *Coyle* v. *Gozzler*, ii. 625.
385. If the notary public has no memorandum nor recollection of the day of demand and notice, but has a memorandum in his book that demand was made and notice given to the indorsers; and testifies that it was his universal practice to make the demand and give notice on the day after the last day of grace, such testimony is competent evidence for the consideration of the jury. *Ibid.*
386. See BILLS AND NOTES, 156. *Patriotic Bank* v. *Little*, ii. 627.
387. See DEPOSITION, 48. *Paul* v. *Lowry*, ii. 628.
388. The declarations of the notary's deputy cannot be given in evidence. *Bank of Columbia* v. *Mackall*, ii. 631.
389. The indorser may waive the objection of want of notice, after the laches has occurred. *Ibid.*
390. No paper can be read in evidence to the jury, without the leave of the Court. *Melvin* v. *Lackland*, ii. 636.

EVIDENCE, (*continued.*)
391. Parol evidence is not competent to vary a written agreement. A written contract by one of two joint partners, made in his own name, does not bind the other partner, although the money obtained thereby be brought into the joint concern. The Court will not sign a bill of exceptions to the terms in which a certain paper which had been offered in evidence, is described in the instruction of the Court to the jury, (the paper itself being referred to,) but will sign a bill of exceptions to the refusal of the Court to sign the former bill. A written contract, the terms of which are clear and unambiguous, is conclusive; and parol evidence is not admissible to contradict it. *Smith* v. *Hoffman et al.* ii. 651.
392. See DISORDERLY HOUSE, 5. *United States* v. *Henny Gray*, ii. 675.
393. See DEPOSITION, 49. *Elliot* v. *Hayman*, ii. 678.
394. If two be indicted jointly for assault and battery, the wife of one of them cannot be witness for the other, although they sever in their pleas. *Wade* v. *Young*, ii. 680.
395. A book-keeper who has given a credit to A. instead of B., by mistake, is a competent witness to prove the mistake without a release. Only what a witness recollects is competent evidence. *Patriotic Bank* v. *Frye*, ii. 684.
396. The authority to indorse notes need not be under seal. The existence of the original note, indorsed by the principal himself, may be proved by parol, without producing it; it having been cancelled and given up to the maker. *Bank of Washington* v. *Peirson*, ii. 685.
397. See CONTRACT, 30, 31. *Riggs* v. *Tayloe*, ii. 687.
398. Upon a second trial, the Court will not permit improper evidence, if objected to, to be given, although it had been received at the first trial without objection. *Ibid.*
399. Testimony of conversations, preliminary to a written, unconditional contract, is admissible and competent upon a count upon a written, conditional contract, which is "lost, destroyed, or mislaid," although the witness does not recollect the terms of the written contract, nor how it was expressed, but states his impression or belief. *Ibid.*
400. A copy of a deed of lands from the record-book may be read in evidence, without producing the original, or accounting for its non-production. *Peltz* v. *Clarke*, ii. 703.
401. The entries of the division and allotment of the property of the original proprietors of the lands in the city of Washington, may be given in evidence without producing, or accounting for the non-production of the original certificate of division and allotment from which the entries were made. *Ibid.*
402. By pleading the general issue, the defendant admits the right of the plaintiff to sue by the name of Charles Maret & Son, without naming the son; and a note indorsed to the plaintiffs by that name, and produced by them on the trial, is *primâ facie* evidence of the existence of such a firm. *Charles Maret & Son* v. *W. Wood*, iii. 2.
403. An action upon the case will lie for the seduction of the plaintiff's daughter, whereby he lost her service. *Mudd* v. *Clements*, iii. 3.
404. In an action upon the case for seduction of the plaintiff's daughter, *per quod*, &c., the plaintiff may give evidence of a promise to marry as a means of seduction. *Ibid.*
405. See BILLS AND NOTES, 162, 163. *Bank of the United States* v. *Corcoran*, iii. 46.
406. Declarations of the plaintiff, after the date of the contract, may be given in evidence by the defendant to mitigate the damages as well as to contradict the plaintiff's evidence. *Goldsborough* v. *Baker*, iii. 48.
407. If a witness for the plaintiff testifies that on a certain day he paid to the

EVIDENCE, (*continued.*)
defendant a certain sum of money, and took his receipt, the plaintiff is not bound to produce the receipt at the trial. *Meade* v. *Keane*, iii. 51.
408. See DEPOSITION, 50. *Ibid*
409. In an action upon a replevin-bond, the defendant may, in mitigation of damages, give evidence of title in himself, of the property replevied. *Quære. Smith* v. *Hazel*, iii. 55.
410. In a suit for freedom, a judgment against the defendant upon his disclaimer and default in not rejoining is not *primâ facie* evidence of the freedom of the petitioner in a subsequent suit by him against another defendant, although this other defendant should, after such judgment, have filed a paper in that suit, claiming the petitioner as his slave. *Negro William* v. *Van Zandt*, iii. 55.
411. Possession of, and acts of ownership over, a colored person, are *primâ facie* evidence of slavery and ownership; and a sale of a slave by an importer, within three years after importation, gives the slave his freedom, if such importer be the sole owner; but if the importer has only a distributive interest with others in the slave, such sale does not give freedom. *Ibid.*
412. See DAMAGES, 13. *Kelly* v. *Huffington*, iii. 81.
413. The testimony of the notary that he demanded of the maker payment of the note, on the third day of grace, and gave notice to the indorser of the non-payment on the third, and also on the fourth day, is competent evidence of demand and notice, although the witness did not recollect the day of the month on which the demand was made and notice given. *Bank of the United States* v. *Abbott*, iii. 94.
414. See BILLS AND NOTES, 166. *Coote* v. *Bank of the United States*, iii. 95.
415. *Id.* 169. *Blue* v. *Russell*, iii. 102.
416. See ACCOUNT, 3, 4, 5, 6, 7. *Barry* v. *Barry*, iii. 120.
417. One of the defendants, if released by the plaintiff, may, if willing, be sworn and examined as a witness for the plaintiff. *Patriotic Bank* v. *Coote*, iii. 169.
418. The defendants were not permitted to give secondary evidence of the contents of a check, without first showing that the original check was not in their power. *Ibid.*
419. When a witness is produced to testify as to the credibility of another witness, the proper questions to be put to the witness are, "Do you know the common reputation of the witness for veracity among the generality of his acquaintance?" "From your knowledge of his general reputation for veracity, would you believe him upon his oath?" The witness is not to be asked who were the persons he had heard say that the general reputation of the witness for veracity was not good. The fact to be ascertained is the common reputation as to truth. *Ibid.*
420. If one member of a firm draw out the joint funds by a check in his own name only, the burden of proof of his authority to do so, is on the creditor. *Ibid.*
421. See DOWER, 3. *Blodget* v. *Thornton*, iii. 176.
422. The defendant had settled his accounts with the plaintiffs and paid the balance then claimed. The plaintiffs afterward changed the entries in their books so as to show a balance still due to the plaintiffs, and presented him an account thus stated, which the defendant refused to admit or receive as a true statement of his account, but received it only as containing the then aspect of the plaintiff's books. The Court refused to compel the defendant to produce that account at the trial unless accompanied by the defendant's affidavit of those facts. *Bank of the United States* v. *Wilson*, iii. 213.
423. Payment of a check by the bank on which it was drawn, is *prima facie* evidence of funds; especially when the checks have been surrendered to the drawer. *Ibid.*

EVIDENCE, (*continued.*)
424. See AUDITOR, 3. *Bank of the United States* v. *Johnson*, iii. 228.
425. If evidence be given to the jury without objection, which the court afterward decides to be inadmissible, the Court will instruct the jury that it is not evidence properly before them. *Ibid.*
426. See CORPORATION, 5. *Bank of the United States* v. *Williams*, iii. 240.
427. See ACCOUNT, 8. *White* v. *Macon*, iii. 250.
428. See BANK, 18. *Lowe* v. *Mc Clery*, iii. 254.
429. Every negro is, *prima facie* to be considered as a slave and as the property of somebody; and he, who acts in respect to him as if he were a freeman, acts at his peril; and the burden of proof is on him to show that the negro is not a slave, or, at least, to show such circumstances as will rebut the presumption arising from color. *Mandeville* v. *Cookenderfer*, iii. 257.
430. If the keeper of a public stage-coach office send a negro away in the coach, it is *prima facie* evidence of carelessness. *Ibid.*
431. Payment of a check by a bank is *prima facie* evidence of funds, and that the apparent state of the funds, upon the books of the bank justified the payment, and it is incumbent upon the plaintiffs to prove the error if there was any. *Bank of the United States* v. *Washington*, iii. 295.
432. A book-keeper of a bank is not obliged to answer a question, the answer to which might charge him with the loss. *Ibid.*
433. See EQUITY, 55, 56, 57, 58, 59. *Hayman* v. *Keally*, iii. 325.
434. In assault and battery, the plaintiff being a mulatto, cannot, at the trial upon the general issue, be compelled to prove his freedom. *Murray* v. *Dulany*, iii. 343.
435. Upon the plea of the statute of limitations, the plaintiff cannot avail himself of the exception in favor of merchants' accounts without stating it in his replication; it is not admissible in evidence upon the general replication to the plea. *Clarke* v. *Mayfield*, iii. 353.
436. See DEPOSITION, 53. *Pannill* v. *Eliason*, iii. 358.
437. In a suit by negroes for their freedom, the proceedings in a suit for alimony between the master and his wife, are competent evidence for the defendant, after the death of the husband. *Negro Phillis* v. *Gibson*, iii. 359.
438. The belief of a witness, together with the facts upon which that belief is founded, is admissible evidence to the jury. *Bank of Columbia* v. *McKenney*, iii. 361.
439. An acknowledgment to the plaintiff's counsel, by the indorser, that he indorsed a draft drawn by the defendant, which was not then shown to him, is *prima facie* evidence of his indorsement, in a suit against the drawer, and throws the burden of proof upon the defendant to show that there were other drafts drawn by the defendant, and indorsed by the same indorser. *Hyer et al.* v. *Smith*, iii. 437.
440. An indorsement "to the order of of Messrs. Hyers, Bremner, and Burdett," is not evidence of an indorsement to "Hyer & Burdett, survivors of Bremner." *Ibid.*
441. Upon the plea of *nul tiel record* a transcript of a record of a justice of the peace in Pennsylvania, certified by him to the County Court, and authenticated by the prothonotary, and the presiding judge of that Court, according to the Act of Congress, is evidence of the judgment although that transcript consists of short docket entries. *Hade* v. *Brotherton*, iii. 594.
442. See BOOKS AND PAPERS, 8. *Triplett et al.* v. *Bank of Washington*, iii. 646.
443. The cashier of a bank is a competent witness to prove that the defendant has overdrawn his account. Payment of a check is *prima facie* evidence of funds. *Bank of Alexandria* v. *Mc Crea*, iii. 649.
444. A receipt for the last year's rent, is evidence that the rent of the preceding year had been paid. *Jenkins* v. *Calvert*, iii. 216.

EVIDENCE, (*continued.*)
445. See AMENDMENT, 32. *Bell* v. *Davis*, iii. 4.
446. In an action upon the case for receiving the plaintiff's slave in Virginia, and bringing him into the District of Columbia, it is not necessary to prove that the defendant knew the slave to be the slave of the plaintiff, although the *scienter* be averred in the declaration. Difference between the enticing of a servant, and the abduction of a slave. In an action for enticing the plaintiff's slave from the service of the plaintiff, knowing him to be the plaintiff's slave, the *scienter* must be proved. *Stanback* v. *Waters*, iv. 6.
447. See BILLS AND NOTES, 188. *Stone* v. *Lawrence*, iv. 11.
448. An official copy of a mortgage of real estate in Washington, D. C., is sufficient evidence of the existence of the original mortgage, and of the debt due thereon. *Beall's Executors* v. *Dick et al.* iv. 18.
449. Upon the plea of property in the defendant in replevin, the burden of proof is on the plaintiff. *Williamson* v. *Ringgold*, iv. 39.
450. See DEPOSITION, 57. *Barrell* v. *Limington*, iv. 70.
451. See BANKRUPT. *Thomas* v. *Cruttenden*, iv. 71.
452. See EQUITY, 76. *Bank of the United States* v. *Benning*, iv. 81.
453. See COPY, 1. *Ibid.*
454. See DEED, 10, 11, 12, 13, 14. *Ibid.*
455. Evidence of the declaration of another person that he was the guilty person cannot be received. *United States* v. *Milier*, iv. 104.
456. Evidence that the defendant dealt the cards at faro, is *prima facie* evidence that he kept the house. *Ibid.*
457. Upon the general issue in trespass *quare clausum fregit*, where the plaintiff relies upon possession without title, the defendant may show by evidence that the close which he broke, was not the plaintiff's close. *Reynolds* v. *Baker*, iv. 104.
458. In replevin the defendant, a constable, who had seized the goods of the plaintiff in execution as the goods of Harrington, was permitted to testify for himself, upon being indemnified by the plaintiff in the execution. *Hilton* v. *Beck*, iv. 107.
459. *Quære*, whether, in a prosecution for bigamy, evidence of a marriage *de facto* is evidence of a marriage *de jure*. *United States* v. *Jennegan*, iv. 118.
460. See BANK, 20. *United States* v. *Jane Byers*, iv. 171.
461. Two witnesses are necessary to a deed of manumission under the Maryland law of 1796, ch. 67, § 29. *Negro Samuel* v. *Childs et al*, iv. 189.
462. See DEPOSITION, 59. *Gustine* v. *Ringgold*, iv. 191.
463. See CONTRACT, 37. *Corcoran* v. *Dougherty*, iv. 205.
464. Upon the trial of an indictment under the 11th section of the Penitentiary Act, for uttering, as true, a counterfeited bank note, it is not necessary that the note given in evidence, should correspond, in words and figures with the note set out in the indictment with the following averment, to wit: "which said false, forged, and counterfeited note, is as follows, to wit," &c., setting out the note *verbatim et literatim*, with all the words, letters, figures, and numerals upon the face of the note. But if the forged note be lost after the indictment found, and before the trial, the jury must be satisfied that it corresponded with that set out in the indictment in the names of the cashier and president, so far as that there was not, in the one, any letter added or omitted, which would vary the sound of the name; and that the note that was passed, had upon its face the letters "No." prefixed to the number 15,402, as is set forth in the indictment. *United States* v. *Edward Hall*, iv. 229.
465. See BILLS AND NOTES, 192. *Carrington* v. *Ford*, iv. 231.
466. See BARON AND FEME, 13. *Smith et ux.* v. *Clarke*, iv. 293.

EVIDENCE, (*continued.*)
467. The appraisement made at the time of levying the distress is *primâ facie* evidence of the value of the goods distrained. *Semmes* v. *Sprigg*, iv. 292.
468. Upon an indictment, in this Court, for perjury, it is not necessary to produce a copy of the record of this Court in the cause in which the perjury was committed. The court is presumed to know its own record. The record exists although not reduced to writing in full; and the record is what it ought to be when correctly extended from the minutes. *United States* v. *Erskine*, iv. 299.
469. In a prosecution for perjury, it is only necessary to prove so much of the testimony of the witness as relates to the particular fact on which the perjury is assigned. *Ibid.*
470. Comparison of handwriting is not evidence to prove forgery. Witnesses skilled in handwriting will not be permitted to give their opinion, upon inspection of the papers, whether the forgery was done by the defendant. *United States* v. *Prout*, iv. 301.
471. When the witness has acquired a knowledge of the handwriting of the prisoner by having often seen him write, &c., it is competent for him to compare the paper in question with the genuine handwriting of the prisoner and state his belief arising from both sources. *United States* v. *Larned*, iv. 312.
472. The dying declarations of the deceased, while in contemplation of death, may be given in evidence. *United States* v. *Taylor*, iv. 338.
473. Upon newly discovered evidence, a new trial was granted after conviction of murder, and the venue was changed. *Ibid.*
474. See DISORDERLY HOUSE, 8. *United States* v. *Jourdine*, iv. 338.
475. *Id.* 9. *United States* v. *Stevens*, iv. 341.
476. *Id.* 10. *United States* v. *Warner*, iv. 342.
477. Upon the plea of "no rent arrear," in replevin, the whole burden of proof is on the party pleading it. *Hungerford* v. *Burr*, iv. 349.
478. See DISORDERLY HOUSE, 11. *United States* v. *Nailor*, iv. 372.
479. See ACCOUNT, 11, 12, 13, 14, 15, 16, 17. *United States* v. *Khun*, iv. 401.
480. See DISORDERLY HOUSE, 12. *United States* v. *McDowell*, iv. 423.
481. A record copy of a deed of emancipation may be given in evidence by the petitioner upon the trial of a petition for freedom without producing the original or accounting for its non-production. *Thomas* v. *Magruder*, iv. 446.
482. See BILLS AND NOTES, 202. *United States* v. *Lee*, iv. 446.
483. *Quære*, whether a payment, after suit brought, can be given in evidence upon *non assumpsit?* *Deale* v. *Krofft*, iv. 448.
484. No prescription runs against a public right, nor is the possession and use for twenty years evidence of a grant from the United States. *Pierson* v. *Elgar*, iv. 454.
485. An absolute deed of goods and chattels, in Alexandria, D. C., need not be recorded; and a record copy is not evidence. *Negro Kitty Lemon* v. *Bacon*, iv. 466.
486. Upon an indictment for forgery, a person interested in setting aside the forged instrument is not a competent witness to prove the forgery. *United States* v. *Anderson*, iv. 476.
487. Evidence will not be admitted to show that the witness is a common prostitute, to discredit her testimony. The question must be confined to her general reputation for veracity, and whether from his knowledge of that general reputation he would believe her upon oath. *United States* v. *Masters*, iv. 479.
488. At the request of the prisoner's counsel, the Court will ask each juror, as he comes to the book to be sworn, whether he has formed and delivered

EVIDENCE, (*continued.*)
any opinion as to the guilt of the prisoner upon the indictment. *United States* v. *Woods*, iv. 484.
489. On a trial for murder, the declarations of the deceased, not made *in extremis*, or with a settled conviction that he is about to die, cannot be given in evidence. *Ibid.*
490. If one of the witnesses, who have been ordered to be taken out of court during the examination, remains in court in violation of the order, the Court will not permit him to be examined. *Ibid.*
491. The Court will not order the United States witnesses to be sent out of court, after they have been examined and while the prisoner's witnesses are under examination. *Ibid.*
492. The Court will not receive parol evidence of a conviction of larceny in Maryland, to disqualify a witness. If upon cross-examination he admit the fact, but states that he was pardoned, upon condition of leaving the State, these facts only go to his credit. *Ibid.*
493. A witness, who after his examination remains in court and hears the other witnesses, may be examined again to rebut the defence set up by the prisoner. *Ibid.*
494. See ATTACHMENT, 92. *Thornton* v. *Davis*, iv. 500.
495. Facts from which the jury may find the defendant guilty of keeping a disorderly house. *United States* v. *Elder*, iv. 507.
496. What was said in the presence of the prisoner, before the examining magistrate, and to which he made no reply, cannot be given in evidence against him. *United States* v. *Brown*, iv. 508.
497. See BOOKS AND PAPERS, 9, 10. *Wallar* v. *Stewart*, iv. 532.
498. If a witness be protected by the Act of Limitations, he is a competent witness without a release from the party to whom he was liable. *Ibid.*
499. A memorandum in the handwriting of a deceased note-clerk of a bank, that he had delivered a certain notice, may be read in evidence in favor of the bank. *Bank of the United States* v. *Richard Davis*, iv. 533.
500. Upon a trial for murder, evidence will not be admitted that another person confessed himself to be the murderer. *United States* v. *McMahon*, iv. 573.
501. A person, conscientiously opposed to capital punishment, was found "not indifferent" by the triors. *Ibid.*
502. Upon a joint indictment against two defendants, they have no right to be tried separately, and neither of them can be examined as a witness for the other, unless there be no evidence against one; in which case the jury may acquit him, and then he may be examined for the other defendant. *United States* v. *Davidson et al.* iv. 576.
503. A person, to the prejudice of whose right a forgery is averred to be, is a competent witness to prove the forgery; so also is the person whose receipt is averred to be forged. *United States* v. *Jackson*, iv. 577.
504. Conversations of the defendant may be given in evidence against him, although not amounting to a confession of guilt, and not corroborated by other testimony; but the Court will not say whether the evidence is sufficient to convict the prisoner. *United States* v. *Larkin*, iv. 617.
505. Copies of plaintiff's account books are not evidence. *Lombard* v. *McLean*, iv. 623.
506. Parol evidence may be given that there was, in fact, no judgment rendered by a justice of the peace as stated in the execution. *Devlin* v. *Gibb & Coyle*, iv. 626.
507. Upon an indictment for stealing bank-notes it is not necessary to produce them on the trial; and if they have been recovered by the owner, and passed away, their contents and purport may be proved by parol. *United States* v. *Lodge*, iv. 673.

EVIDENCE, (*continued.*)
508. Upon the trial of an indictment for a riot, if there be no evidence against one of the defendants, he may be examined as a witness for the other defendants. *United States* v. *Fenwick et al.* iv. 675.
509. The Maryland Act of 1715, c. 26, § 2, which excludes the owner of stolen goods from being a witness for the prosecution in the county courts, is not applicable to prosecutions for larceny in the Circuit Court of the District of Columbia. This Court does not derive any part of its jurisdiction from the laws of Maryland which give jurisdiction to their courts. The jurisdiction of this Court is given by Act of Congress. *United States* v. *Tarlton*, iv. 682.
510. See CONFESSION, 12. *United States* v. *Kurtz et al.* iv. 682.
511. Upon an indictment for a seditious libel, it is not competent for the United States, for the purpose of proving the intent of the defendant in publishing the libel charged in the indictment, to give in evidence any papers subsequently published by the defendant, or found in his possession, unpublished by him, which would be libels, and might be substantive subjects of public prosecution if published. *United States* v. *Crandell*, iv. 683.
512. After having given evidence tending to prove the publication of the libel here, evidence may be given that other copies of the same libel were found in possession of the defendant with certain other papers and pamphlets; but not of the contents of such other papers or pamphlets unless they have relation to the libels charged in the indictment, and would not, in themselves, be substantive ground of prosecution. *Ibid.*
513. Publication of pamphlets, in New York, is not evidence of their publication here, so as to fix upon the defendant, here, such a knowledge of their publication, as to make his possession alone, of other copies of the same, even with the words "read and circulate" written upon them, evidence of the publication of them, by him, here. *Ibid.*
514. The United States cannot, in order to show the evil intent with which the defendant published the paper, give in evidence other unpublished papers or pamphlets found in the defendant's possession, unless accompanied by some acknowledgment or admission by the defendant, that he knew and approved their contents. *Ibid.*
515. Upon the trial of the issue upon "not guilty," the Court will not prevent the United States from giving evidence in support of a count which might be deemed insufficient upon a motion in arrest of judgment. *Ibid.*
516. The fact, that certain papers were found in the possession of the defendant, may be given in evidence although the papers may have been seized under an illegal warrant. *Ibid.*
517. In a prosecution for a libel the United States may give evidence that the defendant was found in possession of printed copies of the libel charged in the indictment, if some evidence has been given of the publication of the same libel in this district. *Ibid.*
518. Upon a count for publishing certain libellous pictures, the Court will not suffer the pamphlets to which they are attached, to be read in evidence to the jury, to show the evil intent with which the defendant published the pictures, nothing but the pictures being charged as a libel in that count. *Ibid.*
519. The counsel for the prosecution, in opening the argument, may read to the jury any part of the pamphlet given in evidence by the United States, which is pertinent to the issue, although not read in the opening of the evidence. *Ibid.*
520. A mulatto, born of a white woman, is a competent witness against a christian white person. *Ibid.*
521. To prove that the bill of sale of a slave by a mother to her son, was fraudu-

EVIDENCE, (*continued.*)
lent as to her creditors, her declarations prior to the date of the deed, were permitted to be given in evidence. *Bowie* v. *Hunter*, iv. 699.
522. If there is any evidence in support of a credit claimed by the defendant, the Court will not instruct the jury that the defendant is not entitled to such credit. *United States* v. *Laub*, iv. 703.
523. A transcript from the books of the treasury of the United States, charging the balance of a former settlement, is not, *per se* evidence upon which the jury can find a verdict for the United States for such balance. *Ibid.*
524. If a public disbursing officer has lost his vouchers without fault on his part, and has produced the best secondary and presumptive evidence in his power, it is for the jury to find whether he has faithfully disbursed the public money which came to his hands. *Ibid.*
525. If a document be read to the jury by the defendant, by consent, containing a statement of the defendant's conversations, the Court will not instruct the jury that such conversations are not evidence of the facts therein stated. *Ibid.*
526. On a petition for freedom under a will, the burden of proof is on the respondent to show that the petitioner was more than forty-five years old, and that the manumission was to the prejudice of creditors. *Gilbert* v. *Ward*, iv. 171.
527. See COMMITMENT, 9. *United States* v. *Addison Brown*, iv. 333.
528. See CONFESSION, 13. *United States* v. *Negro Ralph Prior*, v. 37.
529. The Court, at the suggestion of either party, will order some of the witnesses to be taken out of court and kept by the marshal, while other witnesses are under examination; but will not order them to be kept apart from each other. *United States* v. *Richard H. White*, v. 38.
530. When a witness is objected to on the ground of his disbelief of a God, and a future state of rewards and punishments, he is not to be examined on oath respecting his religious sentiments, but will be permitted to explain them; and if he then declares that he believes in a future state of existence, and in a Supreme Being who will punish him either in this world or the next, for his evil deeds; and if it appear in evidence that he has so declared before the trial, and that he sent his children to the Sunday school, and his wife and children regularly to church, the Court will permit him to be examined as a witness, leaving his credibility to the jury. *Ibid.*
531. The Court will not permit the declarations of another defendant, charged separately for the same offence, to be given in evidence against this defendant; such declarations having been made after the supposed accomplishment of the common purpose. *Ibid.*
532. If a witness be cross-examined upon a collateral matter, evidence will not be admitted to disprove that matter, in order to discredit the witness. *Ibid.*
533. The only questions proper to be asked as to the character of the witness, are, "Are you acquainted with the general reputation of the witness as to veracity? And from your knowledge of that general reputation would you believe him on his oath?" Evidence of the general bad character of the witness will not be permitted to be given to impeach his credibility. *Ibid.*
534. Upon an indictment for burning the treasury building of the United States, the prosecutor was not permitted to prove that another person than the defendant confessed that he burned it, in order thus to prove that the fire was not accidental. *United States* v. *Henry White*, v. 73.
535. A party, in cross-examining a witness, has no right to ask him any question tending to degrade him, unless it be in relation to a fact in issue in the record. *Ibid.*

EVIDENCE, (*continued.*)
536. Limitation may be given in evidence upon the general issue in a criminal cause; and the United States may give evidence that the defendant fled from justice, and therefore was not entitled to the benefit of the limitation. *Ibid.*
537. After a general verdict, the Court is bound to presume that the parties respectively availed themselves of their rights, and that every thing was alleged and proved which they had a right to allege and prove under that issue. The Court, upon a motion in arrest of judgment, is bound to presume that every thing which was necessary to support the verdict, and which could be proved under the issue, was proved to the satisfaction of the jury. *Ibid.*
538. Upon trial of the general issue, the United States may give evidence to show that the defendant fled from justice, although that fact should not be alleged in the indictment, and although it should appear upon the record that the offence was committed more than two years before the indictment was found. *United States* v. *Richard H. White*, v. 116.
539. See BILLS AND NOTES, 208, 209, 210. *Whitney* v. *Huntt*, v. 120.
540. *Id.* 213, 214, 215, 216. *Semmes* v. *Wilson*, v. 285.
541. See DAMAGES, 25, 26. *Nevett* v. *Berry*, v. 291.
542. See AGENT, 19. *Bradley* v. *McKee*, v. 298.
543. See EJECTMENT, 15, 16. *Worthington* v. *Etcheson*, v. 302.
544. See DISORDERLY HOUSE, 16. *United States* v. *Charles Columbus*, v. 304.
545. The receipt, by the lessor, of rent from an under tenant of part of the premises, is no evidence of the consent of the lessor to the lessee's abandonment. *Slacum* v. *Brown*, v. 315.
546. See ANSWER, 7. *Dutilh* v. *Coursault*, v. 349.
547. The intermarriage, and the acknowledgment of the child by the husband, are *primâ facie* evidence that he was the father of the child; and if he begot the child, it was not perjury in the witness to swear that the child was the legitimate heir and only child left by the deceased husband. *United States* v. *Skam*, v. 367.
548. See BANK, 24. *United States* v. *Noble*, v. 371.
549. The criterion by which to decide whether two suits are for the same cause of action, is, whether the evidence properly admissible in one will support the other. *Steam-Packet Co.* v. *Bradley*, v. 393.
550. Parol evidence of the object and intention of a party in entering into a written agreement, and of the circumstances which induced him to make the contract, is not admissible, if there be no ambiguity in the written contract. *Ibid.*
551. See DEED, 25, 26, 27, 28. *Middleton* v. *Sinclair*, v. 409.
552. See BANK, 28. *Guttschlick* v. *Bank of Metropolis*, v. 435.
553. If the defendant read part of the plaintiff's account in evidence, he makes the whole account evidence for the plaintiff. *Griffin* v. *Jeffers*, v. 444.
554. The Court will not permit questions to be put to a witness, tending to disgrace him, and which he is not bound to answer. *United States* v. *Richard H. White*, v. 457.
555. What a deceased witness testified at a former trial of the same cause, may be substantially proved. It is not necessary to prove the very words of the deceased witness. *Ibid.*
556. The Court will not permit a witness, who was a juror at a former trial of the same cause, to testify what was said by witnesses at that trial in relation to the general reputation of a witness as to veracity. *Ibid.*
557. What a witness testified at a former trial, may be given in evidence to discredit him, by showing a contradiction between that and his present testimony, without having first asked the witness whether he did not testify to that effect. *Ibid.*

EVIDENCE, (*continued.*)
558. When the question is upon a disputed boundary line, the Court will not permit hearsay evidence to be given that a particular object (such as a spring,) was on the land of one of the parties. *Fraser et al.* v. *Hunter et al.* v. 470.
559. The plaintiff must prove every abuttal set forth in his declaration. Boundaries may be proved by hearsay. *Ibid.*
560. Evidence that the landlord was indebted to the defendant (who was the tenant's surety in the replevin-bond,) at the time the rent became due by the tenant, cannot be given under a plea of set-off. *Lenox* v. *Gorman*, v. 531.
561. See CITY SURVEYOR. *Miller* v. *Elliot*, v. 531.
562. The marshal's sales-book is evidence of the sale. *Linthicum* v. *Remington*, v. 546.
563. The plaintiff having offered in evidence a deed to the defendant, to show that both parties claimed under the same title, and stating at the same time, that he intended to show that the deed was fraudulent and void as to the plaintiff, is not thereby precluded from proving the fraud. *Ibid.*
564. When evidence has been given on both sides, the Court will not instruct the jury that the plaintiff cannot recover upon the evidence offered on his part. *Ibid.*
565. The Court will not permit counsel to testify as to facts disclosed by his client upon application to him as a conveyancer, to draw a deed. *Ibid.*
566. The grantee of a deed alleged to be fraudulent, is a competent witness in support of the deed, in an action against the person to whom he has conveyed the property, upon receiving from him a release, &c. *Ibid.*
567. It is error, in a judge, to instruct the jury that the evidence is sufficient to convict the defendant. The sufficiency is to be decided by the jury. *United States* v. *Fenwick*, v. 562.
568. See EJECTMENT, 21, 22, 23, 24, 25, 26. *Wilkes* v. *Elliot*, v. 611.
569. See DEVISE, 10. *Newton* v. *Carbery*, v. 632.
570. See EQUITY, 138, 139, 140, 141. *Walker* v. *Parker*, v. 639.
571. It is not sufficient for a jury, in any case, to find testimony; they must not only believe the testimony, but must find the facts which the testimony is produced to prove. The jury ought not to find the defendants guilty unless they find all the facts necessary to constitute the offence charged. *Harriet Jones and Letty Clarke* v. *United States*, v. 647.
572. If the jury find the false pretences, and the subsequent purchase, they may infer that the purchase was made upon the faith of the false pretences. *Ibid.*
573. The defendant's confession that she was free, is competent evidence against her, of that fact. *Ibid.*
574. A person, who has not been heard of for more than seven years, is presumed to have died at the end of the seven years. *Moffit* v. *Varden*, v. 658.
575. A will, not admitted to probate, is not admissible evidence in favor of petitioners for freedom. *Negro Ann Bell* v. *Greenfield*, v. 669.

EXCEPTIONS.
The Court will not sign a bill of exceptions which states that it contains all the evidence in the cause, unless that fact be agreed by the parties. *Lyles* v. *Mayor and Commonalty of Alexandria*, i. 361.

EXECUTION.
1. A *fieri facias* received by the marshal before an attachment for rent not due, is entitled to priority, and must be first satisfied. *Stieber* v. *Hoye*, i. 40.

EXECUTION, (*continued.*)
2. An execution levied on goods of the drawer of a foreign bill of exchange, is no bar to a judgment against the indorser, if the goods have not been sold for want of buyers. *Hodgson* v. *Turner*, i. 74.
3. It is no bar to an execution upon a supersedeas in Washington county, D. C., that the plaintiff has recovered another judgment in Alexandria county, upon the same cause of action, if it be not satisfied. *Curry* v. *Lovell*, i. 80.
4. A *fieri facias* delivered to the marshal will supersede a *fieri facias* subsequently delivered to a constable, and first levied. *Riddle* v. *The Marshal of the District of Columbia*, i. 96.
5. Although there be a stay of execution for two months, yet the writ of error is no supersedeas unless served within ten days after the judgment. *Thompson* v. *Voss*, i. 108.
6. If execution issue before the end of the term in which judgment was rendered, it may, on motion, be quashed, and the judgment rescinded. *Sharpless* v. *Robinson*, i. 147.
7. After the year has elapsed, execution cannot issue here, upon a judgment rendered in Maryland, without a *scire facias*, notwithstanding the thirteenth section of the Act of Congress of February 27, 1801. *McDonald* v. *White*, i. 149.
8. A discharge of the appearance-bail, arrested upon a joint *ca. sa.* against himself and his principal, does not release the principal. *Watson* v. *Summers*, i. 200.
9. An agent of the plaintiff has a right to enter the house of the defendant with the officer, to show him the defendant's goods to be taken on a *fieri facias*. *United States* v. *Baker*, i. 268.
10. When an execution is countermanded at the request of the defendant, and for his accommodation, the plaintiff may have a new execution after the year and day, without *scire facias*. *Phillips* v. *Lowndes*, i. 283.
11. Upon surrender of the debtor on a *ca. sa.*, the Court will not, without motion, order him to be committed in execution. *Peter* v. *Suter*, i. 311.
12. The constable is not entitled to any fee for returning an execution not served. *United States* v. *Little*, i. 411.
13. A clerical mistake in entering a judgment, may be corrected at a subsequent term, and an execution issued thereon may be quashed. *Pierce* v. *Turner*, i. 433.
14. A *scire facias* to revive a judgment is not a new action; and if the original judgment was rendered in Maryland before the 27th of February, 1801, an execution after the revival of the judgment by *scire facias*, in Maryland, may be issued upon it by the clerk of this Court, under the Act of Congress of that date, section thirteen, upon the filing of an exemplification of the record; but the exemplification must be of the whole record in the suit; not of the proceeding upon the *scire facias* only. *Fitzhugh* v. *Blake*, ii. 37.
15. When the judgment is for a penalty to be released on the payment of a smaller sum, that sum must be ascertained before the execution can be issued. *Ibid.*
16. See EQUITY, 14. *Catlett* v. *Fairfax*, ii. 99.
17. See BANK OF COLUMBIA, 1. *Okeley* v. *Boyd*, ii. 176.
18. See CONSTABLE, 6. *United States* v. *Bill*, ii. 202.
19. The Court, at a subsequent term, will set aside a judgment irregularly obtained, and quash the execution issued thereon. *Union Bank, Georgetown*, v. *Crittenden*, ii. 238.
20. If the plaintiff delivers his *fieri facias* to the marshal, and dies; and the marshal levies it upon the goods of the defendant; he has a right, under the laws of Virginia, to give a forthcoming bond to the deceased creditor;

EXECUTION, (*continued.*)
and such bond will support a judgment on motion by the administrator of the creditor. *Entwisle* v. *Bussard*, ii. 331.
21. A motion for a new trial, or in arrest of judgment, is a waiver of the benefit of a stay of execution agreed upon by the parties. *Brent* v. *Coyle*, ii. 348.
22. The Court has no jurisdiction to quash a *fieri facias* issued by order of a justice of the peace from the office of the clerk of this Court, under the Act of Congress of May 3, 1802, § 4, and of the 24th of June, 1812, § 15; nor to render judgment of condemnation of the rights and credits returned upon such *fieri facias*, as levied upon by the constable in the hands of a third person. The law has provided no means to compel the garnishee to pay the money in his hands. *Goulding* v. *Fenwick*, ii. 350.
23. The lien, upon the personal property of the debtor, created by the delivery of the *fieri facias* to the marshal, is lost by the return of *nulla bona;* and is not revived by the delivery of an *alias fieri facias* to the marshal, so as to overreach an intermediate sale by the debtor. *Maul* v. *Scott*, ii. 367.
24. The Court will not quash a *fieri facias* issued after the death of the defendant, if it bear *teste* before his death. *Kane* v. *Love*, ii. 429.
25. If the plaintiff has countermanded his execution at the request of the defendant to give him time; or if he has been delayed by injunction obtained by the defendant, he may take out a new execution after the year and day. *Muncaster* v. *Mason*, ii. 521.
26. If a debtor be taken on a *ca. sa.* in the District of Columbia, and gives a prison-bound's bond, upon which also judgment is rendered against him, he may be retaken on the original *ca. sa.*, after the expiration of a year after the date of the bond, and committed to close custody in execution. *Owen et al.* v. *Glover*, ii. 522.
27. See BANK OF COLUMBIA, 2, 3. *Bank of Columbia* v. *Bunnell*, ii. 306.
28. See ATTACHMENT, 2, 3. *Bank of Washington* v. *Brent*, ii. 538.
29. The English statute of West. 2, 13 E. 1, c. 45, which gives *scire facias* to revive judgment in personal actions, is still in force in Virginia for that purpose. The Act of Virginia of the 19th December, 1792, § 5, limiting the time of issuing writs of *scire facias* in certain cases, is an act of limitation, and must be pleaded. The defendant cannot avail himself of it by plea of *nul tiel record*, nor by motion to quash the *scire facias*, nor by motion in arrest of judgment. It does not apply to a case where an execution has issued and been returned. *Offutt* v. *Henderson*, ii. 553.
30. See BANK OF COLUMBIA, 5, 6. *Bank of Columbia* v. *Cook*, ii. 574.
31. A *scire facias* is not necessary to revive a judgment, if a *fieri facias* has been issued and returned. But if executions have been taken out "to lie in the office," they must be renewed every year. *Johnson* v. *Glover et al.* ii. 678.
32. See BANK OF COLUMBIA, 7. *Bank of Columbia* v. *Sweeney*, ii. 704.
33. A decree in a chancery attachment, after the expiration of a year and day, must be revived by *scire facias* before execution can be had. *Veitch et al.* v. *Farmers Bank*, iii. 81.
34. See BAIL, 72. *Foyles* v. *Law*, iii. 118.
35. *Id.* 73. *McDaniel* v. *Riggs*, iii. 167.
36. See BANK OF COLUMBIA, 8. *Bank of Columbia* v. *Moore*, iii. 292.
37. A judgment may be kept alive by taking out a *fieri facias* within the year and day to lie in the office, and so from year to year; and a *fieri facias* taken out within the last year and day, and put into the marshal's hands, may be executed; and if returned *nulla bona*, a new execution may, at any time thereafter, be taken out without *scire facias*. *Ott* v. *Murray*, iii. 323.

EXECUTION, (*continued.*)
38. See ATTACHMENT, 80. *Sawyer* v. *Morte*, iii. 331.
39. See BANK OF COLUMBIA, 9. *Bank of Columbia* v. *Baker*, iii. 432.
40. Replevin will lie for the goods of a stranger taken in execution as the goods of the debtor, if taken out of the actual or constructive possession of the plaintiff. *Williamson* v. *Ringgold*, iv. 39.
41. A purchaser at a sale under judgment and execution, takes only the right of the debtor at the time of the judgment. A judgment at law does not overreach the prior equity of a third person, *bonâ fide* acquired for valuable consideration. *Corporation of Georgetown* v. *Smith*, iv. 91.
42. See EVIDENCE, 458. *Hilton* v. *Beck*, iv. 107.
43. See BAIL, 81. *Bernard* v. *McKenna*, iv. 130.
44. See BANK OF COLUMBIA, 10, 11, 12, 13. *Smith* v. *Bank of Columbia*, iv. 143.
45. A man cannot be taken in execution again for the same cause. *United States* v. *Watkins*, iv. 271.
46. An execution against two only, upon a judgment against three, without the suggestion of the death of one, is void on its face. *Ex parte Kennedy et al.* iv. 462.
47. An execution cannot now, at this term, be quashed, which is not returnable until next term. *Linthicum* v. *Jones*, iv. 572.
48. An execution against two only upon a judgment against three, is erroneous, not irregular; voidable, not void.
An action for false imprisonment, will not lie for an arrest upon an execution which is only voidable and not void. *Devlin* v. *Gibbs*, iv. 626.
49. An execution upon a *supersedeas* judgment, confessed more than two months after the date of the original judgment, will be quashed. *Chesapeake & Ohio Canal Company* v. *Barcroft et al.* iv. 659.
50. See EQUITY, 117. *Van Ness* v. *Hyatt et al.* v. 127.
51. A judgment of a justice of the peace cannot be seized and sold under a *fi. fa.* issued by a justice of the peace. *Bowen et al.* v. *Howard et al.* v. 308.
52. See DISTRESS, 31. *Remington* v. *Linthicum*, v. 345.
53. An action will not lie upon the official bond of the marshal of the District of Columbia, for not returning an execution, unless he has been required, by rule of Court, to return it, and has failed so to do. *United States* v. *Williams*, v. 400.
54. See ATTACHMENT, 97. *White* v. *Clark et al.* v. 401.
55. See EQUITY, 127. *Ibid.*
56. If the vendee of goods on credit, upon receiving possession of them agree, in writing, that they shall remain the property of the vendors until the purchase money is paid, the vendors may, before payment, maintain replevin for them, as their property, against the marshal who has seized them under an execution against the vendee. *Gaylor et al.* v. *Dyer*, v. 461.
57. See ATTACHMENT, 105. *Allen* v. *Croghan*, v. 517.
58. A *fi. fa.* binds the goods only from the time of its delivery to the marshal; and if it be returned without being levied upon the goods, its lien ceases, and a subsequent *fi. fa.* issued at the suit of another creditor upon a subsequent judgment, and levied upon the goods, must be satisfied before a second *fi. fa.* issued afterwards by the first creditor upon the prior judgment. The execution first delivered to the marshal must be first served. *Cunningham* v. *Offutt*, v. 524.
59. See AMENDMENT, 48. *Linthicum* v. *Remington*, v. 546.
60. See EVIDENCE, 562, 563, 564, 565, 566. *Ibid.*
61. See ESCAPE, 2. *United States* v. *Williams*, v. 619.

EXECUTIVE OFFICERS.
1. The Circuit Court of the District of Columbia, has authority to issue a *mandamus* to an officer of the United States, commanding him to perform

EXECUTIVE OFFICERS, (*continued.*)
a ministerial duty required by an Act of Congress, in which the right of an individual is concerned, if that right is clear, and he has no other legal specific remedy. *United States, at the relation of Stokes et al.* v. *Kendall*, v. 163.
2. The Court, upon a proper affidavit, will grant a rule to show cause why a *mandamus nisi* should not issue. *Ibid.*
3. If a rule be laid upon a party to show cause why a *mandamus* should not issue, the Court cannot judicially take notice of a letter addressed by the party to one of the judges, stating reasons for declining to appear in court to show cause, &c., and enclosing an opinion of the Attorney-General, that the Court has not jurisdiction to issue the writ. *Ibid.*
4. The party to whom a *mandamus* is directed, cannot be permitted to appear without returning the writ. *Ibid.*
5. The executive officers of the United States are personally liable at law for damages in the ordinary forms of action for illegal, official, ministerial acts, or omissions, to the injury of an individual. *Ibid.*
6. It is not by the office of the person to whom the writ is directed, but by the nature of the thing to be done, that the propriety or impropriety of issuing a *mandamus* is to be determined. *Ibid.*
7. The Post-master General, in the discharge of those duties which are prescribed by law, is not lawfully subject to the control of the President. The President's power to control an officer in the exercise of his official functions, is limited to those functions which are by law to be exercised according to the will of the President, and where the order of the President would be a justification in law. *Ibid.*
8. A writ of *mandamus* is as much a means given to the Executive, to enable him to cause the laws to be faithfully executed, as a common *capias ad respondendum* or a *fieri facias*, or any other writ, devised by the judicial power, is, to enable him to discharge that duty. *Ibid.*

EXECUTOR.
1. Evidence may be given to show that the defendant is executrix in her own wrong without charging her as such. *Harper* v. *West's Executrix*. i. 192.
2. An executor may be ruled to plead before the expiration of the year after letters granted. *Frazier* v. *Brackenridge*, i. 203.
3. An executor *de son tort* is liable for the value of the goods taken and used by him. *Baysand* v. *Lovering*, i. 206.
4. If the jury find for the plaintiff, on *plene administravit*, he shall have judgment *de bonis testatoris* for his whole debt. *Fairfax* v. *Fairfax*, i. 292.
5. A direction to executors (in case the rents of certain property should not be sufficient for the purpose,) to adopt some mode of raising the deficiency out of other parts of the estate, gives them power to sell the reversion of the lands. *Roberdeau* v. *Roberdeau*, i. 305.
6. The Orphans' Court in Alexandria County cannot, in any case, grant letters testamentary without security, unless the testator's personal estate is sufficient to pay all the debts. *Ex parte Lee, Executor of Craik*, i. 394.
7. Counts, charging the defendants as executors, upon the promise of their testator, and upon their own promise as executors in consideration of assets, may be joined in the same declaration; and the judgment upon each count will be *de bonis testatoris*. *Dixon* v. *Ramsay*, i. 472.
8. In actions against executors, the act of limitations may be pleaded after office judgment. *Wilson* v. *Turberville's Ex'rs*. i. 492.
9. See EVIDENCE, 223, 224, 225. *Fairfax* v. *Fairfax*, ii. 25.
10. The executor upon *plene administravit*, is not to be charged with lands devised to him to be sold, if necessary, to pay debts. *Curray* v. *McMunn*, ii. 51.

EXECUTOR, (*continued.*)
11. See EQUITY, 99. *Catlett* v. *Fairfax*, ii. 99.
12. The possession of property by the defendant under a disposition of it by deed in the lifetime of the deceased, is not such a possession as will, in law, constitute the possessor executor *de son tort*. *Peters* v. *Breckenridge*, ii. 518.
13. If the issue, "never executor," be found against the defendant, the judgment will be *de bonis testatoris si, &c., et si non de bonis propriis*. *Ibid.*
14. An executor, indebted to his testator's estate, cannot, in an action upon his administration bond, brought by creditors or legatees, discharge himself by showing payment to his co-executor. *United States* v. *Rose*, ii. 567.
15. The creditors of the insolvent estate of a deceased debtor have a right to contest the settlement of the executor's account before the Orphans' Court, and to appeal from its decision to this Court. *Nichols et al.* v. *Hodge's Ex'rs.* ii. 582.

EXECUTORY DEVISE.
See CHARITABLE USES, 3. *Barnes* v. *Barnes*, iii. 269.

EXTORTION.
Laboring to exact fees from one party, after having received them from another, is not extortion; and whether it be an indictable offence, *quære*. *United States* v. *Chenault*, ii. 70.

FACTOR.
1. When bills are drawn on a consignee, on a shipment of tobacco, he has no right to hold up the tobacco after the time of payment of the bills without orders; but should sell to meet the payment. *Potts* v. *Findlay et al.* i. 514.
2. A factor may retain for a general balance due by his principal. *McCobb* v. *Lindsay et al.* ii. 215.
3. If a factor sell in his own name, the vendee cannot set off a claim against the factor's principal, not yet payable. *Ibid.*

FALSE IMPRISONMENT.
1. See EXECUTION, 48. *Devlin* v. *Gibbs & Coyle*, iv. 626.
2. In an action of false imprisonment against the superintendent of the Washington Asylum, he may plead the general issue and give in evidence his justification under a warrant from a justice of the peace. *Ingram* v. *Butt*, iv. 701.

FALSE PRETENCES.
1. It is not an indictable offence at common law to obtain and take, by means of false and fraudulent pretences, from the counting-house of a merchant, sundry of his books of account. *United States* v *Carico*, ii. 446.
2. The Circuit Court of the District of Columbia for the county of Washington, has jurisdiction of an offence committed in that county against the common law of Maryland, adopted as the law of the United States for that county by the Act of Congress of the 27th of February, 1801; although that offence may consist in the fraudulently obtaining of the money of the United States by an officer of the United States by means of false pretences. *United States* v. *Watkins*, iii. 441.
3. By the cession of this part of the district to the United States by Maryland, all the State prerogative which Maryland enjoyed under the common law which she had adopted, so far as concerned the ceded territory, passed to the United States.
All the power which Maryland had, by virtue of that common law prerogative, to punish, by indictment, offenders against her sovereignty, and to protect that sovereignty, as to this district, became vested in the United States. The United States therefore have a criminal common law juris-

FALSE PRETENCES, (*continued.*)
diction in this part of the district, and this Court has a criminal common law jurisdiction. *Ibid.*

4. Frauds affecting the public at large, or the public revenue, constitute a distinct class of cases punishable by indictment, although the fraud be not effected by means of false public tokens, or by forgery, or by conspiracy, or by any particular sort of means. The principle, which, in transactions between individuals, requires, in order to make the fraud indictable as a public offence, that it should be committed by tokens, or false pretences, or forgery or conspiracy, does not apply to direct frauds upon the public. All frauds, affecting the public at large, or an indefinite number of persons, who have suffered a common or a joint damage by reason of the fraud, are indictable offences at common law. *Ibid.*
5. In an indictment for obtaining money by false pretences, the averment must state what was pretended; and that what was pretended was false, and wherein, and in what particular it was false. *Ibid.*
6. An indictment averring that the defendant, "ostensibly for the public service, but falsely and without authority, caused and procured to be issued from the Navy department of the United States," a certain requisition set forth in the indictment, cannot be supported as an indictment for forgery. *Ibid.*
7. An indictment for obtaining money by false pretences, one of which is stated to be an erasure in an account rendered to the defendant, cannot be maintained as an indictment for forgery. *Ibid.*
8. Fraud is an inference of law from certain facts; and the indictment must aver all the facts which constitute the fraud. Whether an act be done fraudulently, or not, is a question of law so far as the moral character of the act is involved.

   To aver that an act was fraudulently done, is, therefore, so far as the moral character of the act is involved, to aver a matter of law, and not a matter of fact.

   No epithet, or averment of a fraudulent intent can supply the place of an averment of the fact, or facts, from which the legal inference of fraud is to be drawn.

   Deceit is an essential ingredient in fraud. No fraud can be committed but by deceitful practices; and the particular deceitful practices by which the fraud is alleged to have been committed, must be specially set forth so that the deceit may appear upon the face of the indictment, that the Court may judge whether the fraud, which constitutes the crime, can be inferred from the facts stated in the indictment. *Ibid.*
9. An indictment for forgery by erasure, is not good at common law, unless it use the technical terms "forge" or "counterfeit." *Ibid.*
10. The Court may, in its discretion, give an additional charge to the grand jury although they should not ask it; and when they do ask it the Court may, perhaps, be bound to give it, if it be such an instruction as can be given without committing the Court on points which might come before them to be decided on the trial in chief.

    When an instruction to the grand jury is asked, either by the accused or the prosecutor, it is a matter of discretion with the Court to give the instruction, or not, considering the extent of the prayer, and all the circumstances under which it is asked. *Ibid.*
11. If an officer of the government of the United States not intrusted with public money, get it into his hands by fraud, and appropriate it to his own use, the offence is not an official misdemeanor, but is an offence at common law. *Ibid.*
12. A count describing the deceptive means by which the defendant procured the placing of public money in the hands of a Navy agent; and also the

FALSE PRETENCES, (*continued.*)
means by which the defendant got the money into his own hands for his own use, from that agent, does not charge two separate offences. *Ibid.*
13. If one necessary link, in the chain of means to accomplish the fraud, was obtained by deceptive practices, those deceptive practices are as effectual in constituting the offence, as if every other link in the chain had been forged by the like deception. The deceitful practices, used in obtaining one of the means of effecting the fraud, infect the whole transaction. *Ibid.*
14. If a person in Washington, D. C., by deceitful practices, causes money of the United States to be placed to his credit in New York, and subject to his draft, and he draws accordingly in Washington and there gets the draft discounted by a broker, and there receives the proceeds of the draft, the fraud is consummated in Washington, if the drawee honors and pays the draft, and thereby ratifies the act of the broker in advancing the money; but until the draft is paid, the offence is not complete. *Ibid.*
15. If upon the whole record it should appear to the Court that the offence was committed beyond the time limited by the statute, the judgment must be for the defendant. The defendant has a right to avail himself of the Statute of Limitations upon demurrer. The limitation of two years, in the Act of Congress of 30th April, 1790, is applicable to common-law-offences in the District of Columbia. *Ibid.*
16. A party cannot discredit his own witness by testimony as to his general character; but may give evidence to contradict any important fact to which the witness has testified. A fact is not immaterial if it shows that the party prevaricated in relation to a fact in issue. *Ibid.*
17. The Court may, in a criminal case, suffer the defendant to withdraw his demurrer to the indictment after argument and after the Court has intimated an opinion that it ought to be overruled. and before judgment entered upon the demurrer, although a judgment against the defendant upon demurrer in a case of misdemeanor is peremptory, yet it is not so if against the United States; for they may send up new bills of indictment successively until they have made their case perfect in form.
Upon suffering a defendant to withdraw his demurrer after argument and after an intimation of the opinion of the Court, they may require him to waive his right to move in arrest of judgment for any matter apparent upon the indictment. *Ibid.*
18. If the jury bring in a verdict not answering to the whole matter in issue, the Court, without recording the verdict, will inform the jury that they may retire again and reconsider their verdict. If they then return a verdict, to which neither party objects, it will be recorded. *Ibid.*
19. See CHALLENGE, 25. *Ibid.*
20. The Circuit Court of the District of Columbia has jurisdiction of any common-law offence committed in the county of Washington by an officer of the government of the United States of which it would have jurisdiction if committed by a person not an officer of the United States, although such offence should have been committed by means consisting, in part, of acts done by virtue or by color of his office. *Ibid.*
21. If the jury has been ont a long time without any probability of agreeing, the Court may, in a case of misdemeanor, discharge them without the consent of the defendant. *Ibid.*
22. If a verdict is so imperfect that no judgment can be rendered upon it, it must he considered as no verdict, and a *venire de novo* awarded. *Ibid.*
23. The recording of a verdict, does not prevent the Court from deciding that it is so imperfect as not to justify a judgment. *Ibid.*
24. A verdict which finds only one or two out of many facts necessary to constitute the offence, and saying nothing of the residue, is not a partial verdict in the technical sense of those words. *Ibid.*

FALSE PRETENCES, (*continued.*)

25. If the jury do not find a general verdict, nor a partial verdict, nor a special verdict, they find no verdict. *Ibid.*
26. A verdict in a criminal case, finding a fact which, if specially pleaded, would be a good defence, is to be considered and entered as a general verdict; so also if it find a fact inconsistent with the guilt of the defendant; but it is otherwise when the facts found neither establish, nor are inconsistent with the guilt or the innocence of the defendant. *Ibid.*
27. Upon the trial of an indictment for a fraud, at common law, upon the United States, by an officer of the United States, in getting into his hands and appropriating to his own use, money of the United States which he had no right or authority to receive, the fact that he obtained the money in his official capacity is immaterial. *Ibid.*
28. The Court refused to instruct the grand-jury that a certain paper intended to be offered in evidence to them by the Attorney of the United States, was such a paper as could be the subject of forgery at common law, and that certain specified facts and intents amounted to forgery at common law; and that if they found those facts and intents, they ought to find the bill, although it contained the word "forged." *Ibid.*
29. Counsel are not permitted to argue to the jury the question of law which has been, by both parties, submitted to the Court, and by them decided, and the jury instructed thereon. The only way in which the jury can decide the law of the case, is by finding a general verdict. *Ibid.*
30. If the instruction given, exceed the matter submitted to the Court, and involve questions of law not involved in the instruction prayed, the counsel will be permitted to argue before the jury the questions of law not involved in the instruction asked and submitted to the Court; and if the opposite counsel withdraw their prayer, the Court will withdraw its instruction, and leave the question of law to be argued before the jury, reserving the right of the Court to instruct the jury on the questions of law after the close of the argument to the jury. *Ibid.*
31. Although the fourth auditor had no authority by law, to direct the disposition of the money of the United States, in the hands of a navy agent, the payments by the latter, of the drafts of the former, were not necessarily payments in his own wrong.

    If the fourth auditor had such authority, the navy agent might, under possible circumstances, be excused for paying his drafts not officially drawn; and such drafts and payments might be a fraud on the United States. The fact that the government has credited the navy agent for such payments, and charged the same to the drawer, does not exculpate him. The fact that the money drawn for was ultimately paid by the navy agent in New York, does not prevent the Circuit Court of the District of Columbia from having jurisdiction of the cause, if the defendant received the money in Washington by a discount of the draft. *Ibid.*
32. If the official character of an officer of the United States, be not a necessary ingredient of the offence charged in the indictment, the naming of him, as such, and the averment that he was such an officer, will not prevent a court of law from taking cognizance of the offence. *Ibid.*
33. An indictment at common law for obtaining goods by false pretences, is not sufficient, unless it set forth such false tokens as the common law recognizes. *United States* v. *Hale*, iv. 83.
34. An indictment cannot be sustained in Washington county, District of Columbia, for obtaining money by false pretences made in Maryland. *United States* v. *Plympton*, iv. 309.
35. It is not larceny to receive goods under false pretences. *United States* v. *Robertson*, v. 38.
36. See EVIDENCE, 571, 572, 573. *Harriet Jones and Letty Clarke* v. *United States*, v. 647.

FALSE PRETENCES, (*continued.*)

37. No person is guilty under the clause of the Penitentiary Act respecting false pretences, unless he has obtained something by his false pretence. *Ibid.*

FARO.

1. Under the Act of Maryland, 1797, c. 110, the offence of keeping a faro-table can only be committed by a tavern-keeper, or retailer of spirituous liquors. *United States* v. *Lefevre*, i. 244.
2. The gratuitous distribution of ardent spirits at a public gaming-table, does not constitute the keeper of the gaming-table a retailer of spirituous liquors. *United States* v. *Mickle*, i. 268.
3. See By-Law, 10. *United States* v. *Wells*, ii. 45.
4. See Corporation of Washington, 8. *Corporation of Washington* v. *Strother*, ii. 542.
5. See By-Law, 12. *United States* v. *Robin Hood*, ii. 133.

THE FAUQUIER AND ALEXANDRIA TURNPIKE COMPANY.

The President of the Fauquier and Alexandria Turnpike Company without the directors, had no power to issue certificates of stock. No certificates could be lawfully issued to a non-subscriber. The company is not bound by the acts of its agents, unless acting within the scope of their authority; and a special agency must be strictly pursued. The President had only a special authority, and having exceeded it by issuing certificates of stock without the authority of the directors, and without consideration, his acts did not bind the company. *Holbrook* v. *Fauquier and Alexandria Turnpike Co.* iii. 425.

FEES.

1. The marshal is entitled to a fee of ninety pounds tobacco, for impanelling a jury in a criminal prosecution. *United States* v. *McDonald*, i. 78.
2. The marshal's commission of five per cent. may be included in the replevin-bond for rent in Alexandria, D. C. *Alexander* v. *Thomas*, i. 92.
3. The marshal may include his commissions in a forthcoming bond; and is also entitled to his commission upon an execution upon the bond. *Thomas* v. *Brent*, i. 161.
4. After the term in which a rule is laid for security for fees, the clerk, upon a motion for judgment on the rule, need not prove the plaintiff to be a non-resident. *Devigny* v. *Moore*, i. 174.
5. A witness may be allowed his fees, although not regularly summoned. *United States* v. *Williams & Ray*, i. 178.
6. A witness cannot have an attachment for his fees until he has served an order of court upon the party to pay them. *Sadler* v. *Moore*, i. 212.
7. Witnesses are entitled to their fees, although the summons be served by a private person. *Power* v. *Semmes*, i. 247.
8. If the plaintiff has received the debt and costs, the marshal cannot detain the defendant upon a *ca. sa.* for his poundage. *Causin* v. *Chubb*, i. 267.
9. The sureties of a sheriff, in Virginia, are not liable for officers' fees, unless the account of the same shall have been delivered to the sheriff for collection before the 1st of March. *Governor of Virginia* v. *Turner's sureties*, i. 286.
10. A rule for security for fees, is not, of itself, sufficient ground for a rule for security for costs. *Brohawn* v. *Van Ness*, i. 366.
11. The constable is not entitled to any fee for returning an execution not served. *United States* v. *Little*, i. 411.
12. The marshal is entitled to a fee of $5.50, for summoning and impanelling a coroner's inquest in Alexandria county, District of Columbia. *Brent* v. *Justice of the Peace*, i. 434.
13. See Attorney, 2. *Law* v. *Ewell*, ii. 144.
14. If the verdict of the jury be below the jurisdiction of the Court, the jury

FEES, (*continued.*)
is not entitled to their fee of twelve shillings. *Skinner* v. *McCaffrey*, ii. 193.
15. See ATTACHMENT, 46. *Lee* v. *Patterson*, ii. 199.
16. The harbor-master in Alexandria, D. C., has no right to charge fees upon vessels which come from Philadelphia, through the Delaware canal, from the Delaware bay to the Chesapeake bay, and thence to Alexandria. They are to be considered as bay-craft. *Shinn* v. *McKnight*, iv. 134.
17. See CLERKS, 5. *Ex parte E. J. Lee*, iv. 197.
18. See COSTS, 48. *Ringgold* v. *Huffman*, iv. 201.
19. *Id.* 49. *Ward* v. *Corporation of Washington*, iv. 232.
20. The marshal of the District of Columbia is not entitled to poundage upon the arrest of a debtor upon a *ca. sa.* in Alexandria county, who has been discharged from such arrest by order of the plaintiff without payment. *Swann* v. *Ringgold*, iv. 238.
21. See COSTS, 50. *Howe* v. *McDermott*, iv. 711.

FELONY.
1. Every felony is not a capital case, and a prisoner indicted for counterfeiting a note of the Bank of the United States, is not entitled under the Act of Congress of April 30, 1790, § 29, to a copy of the indictment and list of witnesses two days before pleading, although the offence be made felony by the statute. *United States* v. *Williams & Ray*, i. 178.
2. If a statute makes it felony to steal the notes of any incorporated bank, the statute by which that bank was incorporated, thereby becomes a public statute. *United States* v. *Porte*, i. 369.
3. An averment that a letter containing bank-notes, was fraudulently and improperly secreted, withheld and taken in the post-office, by the defendant, is not a charge of felony so as to deprive the plaintiffs of their civil remedy. *Dunlop* v. *Munroe*, i. 536.
4. In cases of felony, the prisoner is to be arraigned in the criminal-bar or dock. *United States* v. *Pettis*, iv. 186.
5. Although certain kinds of forgery are made felony by particular statutes, they are punishable under the Penitentiary Act of 1831. *United States* v. *McCarthy*, iv. 304.
6. See COMMITMENT, 9. *United States* v. *Addison Brown*. iv. 333.
7. *Quære*, whether upon an indictment for felony, judgment may be rendered as for a misdemeanor? And whether, if the facts stated in the indictment do not amount to felony, the word "feloniously" may not be rejected as surplusage, and judgment rendered as for a misdemeanor? *United States* v. *Larned*, iv. 335.

FERRIES.
1. This Court, sitting in Alexandria, has only the powers of a County Court in Virginia in relation to ferries. *Thomas Berry's case*, ii. 13.
2. This Court has a discretion to grant or refuse a license for a ferry over the Eastern Branch. *Nicholas Young's case*, ii. 453.

FIERI FACIAS.
1. A *fieri facias* received by the marshal, before an attachment for rent not due, must be first satisfied. *Stieber* v. *Hoye*, i. 40.
2. An execution, levied on the goods of the drawer, is no bar to a judgment against the indorser, if the goods have not been sold for want of buyers. *Hodgson* v. *Turner*, i. 74.
3. A *fieri facias* delivered to the marshal will supersede a *fieri facias* subsequently delivered to a constable, and first levied. *Riddle* v. *Marshal of the District of Columbia*, i. 96.
4. Upon a breach assigned, in not paying over money received upon *fieri facias*, the plaintiff must prove that the sheriff received the money before the return-day of the execution. *Governor of Virginia* v. *Wise*, i. 142.

FINES AND PENALTIES.

1. The Levy Court of Washington county, D. C., are only entitled to a moiety of the fixed fines, penalties, and forfeitures accruing under the adopted statutes of Maryland; not of the common-law discretionary fines; nor of those imposed under original acts of Congress. *Levy Court* v. *Ringgold*, ii. 659.
2. The Attorney of the United States for the District of Columbia is not bound by the second section of the Maryland Act of 1795, c. 74, to order writs of *ca. sa.* for fines, &c., on the application of the marshal, nor can the marshal order them without the authority of the District Attorney, who has a discretion in that respect, which the marshal has no right to control. *Ibid.*
3. The marshal is not liable for fines which he has no means of collecting. *Ibid.*
4. Security, by recognizance, for fine and costs, may be taken in Washington county, D. C. *United States* v. *Hilliard*, iv. 644.

FISHING-GROUND.

. If a master of a vessel navigating the Potomac River, in the usual course of navigation, anchor in the plaintiff's fishing-ground, without malice, for the purpose of taking in the residue of the cargo; and when required to depart, if his not doing so immediately be not attributable to malice, but to a reasonable cause, and he remove his vessel as soon as the circumstances of wind, weather, and tide, will permit, he is not liable for damages. But if the defendant knowingly, and without necessity, or reasonable commercial purpose, anchor his vessel within the limits of the plaintiff's fishery, so as to interrupt the same; or if the defendant, having so anchored his vessel within the said limits, knowingly, and without necessity, or any reasonable commercial purpose, remain within the same, so as to interrupt the plaintiff's fishery, the plaintiff is entitled to recover. *Mason* v. *Mansfield*, iv. 580.

FIXTURES.

1. Franklin stoves, fixed in the usual manner with bricks and mortar, pass to the vendee of the house. *Smith* v. *Heiskell*, i. 99.
2. A tenant who has erected a wooden shed upon posts inserted two feet into the earth, has a right to remove it during the term. *Krouse* v. *Ross*, i. 368.

FLOUR.

1. In an action for a penalty under the Virginia Act of December 21, 1792, "regulating the inspection of flour and bread," it is not necessary that the United States should be nominally a plaintiff, but it may be recovered in an action *qui tam*. *Cloud, qui tam*, v. *Hewitt*, iii. 199.
2. In an action for a penalty for altering the inspector's marks on barrels of flour, it is necessary to set out the marks, and how altered. *Ibid.*
3. The word "condemned," must be branded on the casks, or it is not within the fifteenth nor the tenth section, of the act. *Ibid.*

FORCIBLE ENTRY AND DETAINER.

1. In forcible entry and detainer, it is not necessary that it should appear, upon *certiorari*, that the inquest was taken upon the spot where the force was used; nor that the jurors should appear to be qualified according to the requisites of the common law. *United States* v. *Donohoo*, i. 474.
2. In Alexandria county, a *certiorari* in forcible entry and detainer may be issued by one judge in vacation, and the inquisition may be traversed. *United States* v. *Browning*, i. 500.

FORCIBLE ENTRY AND DETAINER, (*continued.*)
3. No plea will be allowed but a traverse of the force, or a possession of three years. *Ibid.*
4. Restitution will not be awarded unless some person be held out of possession who has a right of possession. *Ibid.*
5. The Act of Virginia does not punish the force; it only provides for restitution. *Ibid.*
6. See CERTIORARI, 6. *Holmead* v. *Smith*, v. 343.

FOREIGN SENTENCE.
1. A sentence of a foreign Court of Vice-Admiralty, condemning a vessel as enemy-property, is not conclusive evidence of violation of neutrality. *Croudson* v. *Leonard*, i. 291.
2. The sentence and proceedings of a foreign Court of Vice-Admiralty condemning the goods as enemy-property, are not conclusive evidence of that fact, in a suit upon a policy of insurance. The sentence may be invalidated by the evidence contained in the record of the proceedings. *Lambert* v. *Smith*, i. 361.

FOREIGN LAW.
Where civil rights are acquired under a foreign law, this Court will enforce them. *Negro Delilah* v. *Jacobs*, iv. 238.

FOREIGN MINISTER.
1. Domestic servants of a foreign minister are not liable to the ordinary tribunals of the country, for misdemeanors. *United States* v. *Lafontaine*, iv. 173.
2. It is a breach of diplomatic privilege by an officer of justice, to enter the dwelling-house of a secretary of legation, and seize, there, a runaway slave, for which the officer will be removed from office. *United States* v. *Madison Jeffers*, iv. 704.

FORESTALLING.
See BY-LAW, 23. *Botelor* v. *Corporation of Washington*, ii. 676.

FORFEITURE.
Upon the seizure and condemnation of a vessel for the violation of the Act of February 28, 1806, to suspend commercial intercourse, &c., the United States are interested only in one half of the forfeiture. *United States* v. *Yeaton*, ii. 73.

FORGERY.
1. In an indictment for forgery of a bill, it is not necessary to set forth the indorsements; but evidence of the defendant's indorsement may be given to show his fraudulent intent, although his indorsement is not averred in the indictment. *United States* v. *Peacock*, i. 215.
2. The drawee of a forged draft is a competent witness to support the prosecution. *United States* v. *Bates*, ii. 1.
3. Peremptory challenge not allowed. *United States* v. *Smithers*, ii. 38.
4. Forgery of a note of a private unchartered bank, may be punished under the Maryland Act of 1799, c. 75, § 1. *United States* v. *Winslow*, ii. 47.
5. Possession of forged bank-notes, with intent to utter them as true, is not an indictable offence. *United States* v. *Wright*, ii. 68.
6. A note of an unincorporated bank, "payable out of the joint funds thereof, and no other," is a promissory note within the meaning of the Maryland statute of 1799, c. 75, § 1; the note must be precisely and accurately set forth in the indictment. *United States* v. *Smith*, ii. 111.
7. A defendant indicted for counterfeiting a bank-note in Alexandria, D. C., is entitled to a peremptory challenge. *United States* v. *Wood*, ii. 164.

FORGERY, (*continued.*)
8. Falsely altering a promissory note in a material part, with intent to defraud any person, is a forgery within the meaning of the statutes. *Ibid.*
9. See EVIDENCE, 306. *United States* v. *Carter*, ii. 243.
10. An acquittal upon an indictment for forging an order with intent to defraud John Lang, is no bar to an indictment for forging the same order with intent to defraud William Lang. *United States* v. *Book*, ii. 294.
11. An order in these words: "Sir, — Let the bearer have one pair of boots. Yours, &c. Levin Stewart;" is a draft for the delivery of goods, within the Maryland Act of 1799, c. 75, § 2. *Ibid.*
12. See EVIDENCE, 317. *United States* v. *Wright*, ii. 296.
13. *Id.* 344. *United States* v. *Crandell*, ii. 373.
14. A written request to lend money, may be the subject of forgery at common law. *United States* v. *Green*, ii. 520.
15. The person whose paper is forged, is a good witness for the prosecution. *United States* v. *Brown*, iii. 268.
16. The following is "an order for the payment of money or delivery of goods," within the second section of the Maryland Act of 1799, c. 75, namely: "Mr. E. M. Linthicum will please to let the bearer, John Brown, have such articles as he may choose, on my account, to the value of thirty dollars; also twenty dollars in cash; and oblige his friend, Henry Tayloe. For Col. John Tayloe, Washington City. 24th December, 1827." *Ibid.*
17. See FALSE PRETENCES, 6, 7, 9, 28. *United States* v. *Watkins*, iii. 441.
18. See EVIDENCE, 464. *United States* v. *Hall*, iv. 229.
19. *Id.* 470. *United States* v. *Prout*, iv. 301.
20. In an indictment upon the eleventh section of the Penitentiary Act, for uttering a forged check, it is not necessary to aver that the uttering was to the prejudice of the right of any other person," nor that the check was "a paper writing or printed paper." That act was not intended to alter the description of the offence of forgery, as defined by the common law, or statute law of Maryland, but to designate the punishment, however the offence may be described in those laws; and although certain kinds of forgery may, by those laws, be made felony, they are punishable under the Penitentiary Act of 1831. *United States* v. *McCarthy*, iv. 304.
21. A forged paper, inclosed at Baltimore, in a letter directed to a person in Washington, D. C., and put into the post-office at Baltimore, is not an uttering of the note in Washington. *United States* v. *Plympton*, iv. 309.
22. See FELONY, 7. *United States* v. *Larned*, iv. 335.
23. *Quære*, whether, in an indictment under the Penitentiary Act, for forging "a paper writing," it must not be averred to be done "to the prejudice of the right" of some person? *Ibid.*
24. See EVIDENCE, 486. *United States* v. *Anderson*, iv. 476.
25. *Id.* 503. *United States* v. *Jackson*, iv. 577.
26. *Id.* 471. *United States* v. *Larned*, iv. 312.
27. See BILLS AND NOTES, 213, 214, 216. *Semmes* v. *Wilson*, v. 285.
28. See BANK, 24, 25, 26. *United States* v. *Noble*, v. 371.

FRAUD.
1. Upon proof of fraud, the Court will not permit the debtor to take the insolvent oath, under the law of Virginia. *Camellos* v. *Reverez*, i. 62.
2. A conditional promise to pay the debt of another, is within the statute of frauds. *Barry* v. *Law*, i. 77.
3. An entry in the defendant's books, not signed by any one, is not a sufficient note in writing to take the case out of the statute of frauds. *Ibid.*
4. If the plaintiff obtain the defendant's acceptance by a fraudulent practice, he cannot recover upon it. *Wilson* v. *Cromwell*, i. 214.

FRAUD, (*continued.*)
5. Acts done by the vendor alone, will not take a verbal sale of land out of the statute of frauds. *Reeves* v. *Pye*, i. 219.
6. An insolvent, who obtains his discharge by fraud, is not discharged "in due course of law." *Slacum* v. *Semmes & Wise*, i. 242.
7. A Court of Equity will not decree the execution of a verbal agreement to pay the debt of another, although confessed in the answer, if the statute of frauds be pleaded and insisted on in the answer. *Thompson et al.* v. *Jamesson*, i. 295.
8. A parol gift of a slave in Virginia, in 1784, was void under the statute of 1758, although possession accompanied and followed the gift; and it was not made valid by the Act of 1787. *Lee* v. *Ramsay*, i. 435.
9. A deed of gift of a slave in 1790, was void unless possession accompanied and followed the deed. *Ibid.*
10. A promise by the defendant, when compromising with his creditors, to pay the plaintiff an additional sum, is a fraud upon the other creditors, and is void. *Bartleman* v. *Douglass*, i. 450.
11. A marriage settlement of the intended wife's goods, although not recorded, protects the goods from the creditors of the husband. *Pierce* v. *Turner*, i. 462.
12. The Court will not permit a party to prove other fraudulent transactions of the other party with strangers, to corroborate the charge of fraud in the present case. *Jones* v. *Knowles*, i. 523.
13. Fraud may be given in evidence upon non assumpsit, for it avoids the contract altogether. *Morrison* v. *Clifford*, i. 585.
14. A sale of goods in possession of the vendor's bailee, is fraudulent as to creditors unless the possession accompany and follow the sale, or an order be given by the vendor, and served on the bailee, to deliver possession to the vendee. *Gilman* v. *Herbert*, ii. 58.
15. See EVIDENCE, 336, 337, 338, 339. *United States* v. *Porter*, ii. 60.
16. Upon a motion to exonerate the bail, the Court will not receive evidence of fraud in the principal in contracting the debt. *Burns* v. *Sims's bail*, ii. 75.
17. The taking possession of, and cultivating the land, by the vendee, takes the sale out of the statute of frauds. *Conway* v. *Sherron*, ii. 80.
18. A contract for the sale of notes of a private bank, is within the statute of frauds. *Riggs* v. *Magruder*, ii. 143.
19. A verbal agreement which is to be reduced to writing, and signed the next day, is not complete until so reduced to writing and signed. *Ibid.*
20. See BILL OF SALE, 1. *Washington* v. *Wilson*, ii. 153.
21. A verbal acceptance of an order drawn at the foot of the account of a third person against the drawer, is not a promise to pay the debt of another, within the statute of frauds. *Shields* v. *Middleton*, ii. 205.
22. An auctioneer's memorandum, or entry, in his sale's-book, of a sale of lands, is not sufficient to take the case out of the statute of frauds, if it does not sufficiently describe the lands, and the terms of sale. *Williams* v. *Threlkeld*, ii. 307.
23. *Quære*, whether the auctioneer's written memorandum of the sale of lands, is, in any case, sufficient to take the case out of the statute. *Ibid.*
24. A separate and express promise, by one co-partner, to pay a debt of the firm, is not a promise to pay the debt of another, within the statute of frauds, although judgment for the same debt had been recovered against the other partner. *Rice* v. *Barry*, ii. 447.
25. If an insolvent debtor, upon allegations filed, be found guilty of having disposed of his property to defraud his creditors, he will be ordered into close custody, and precluded from any benefit under the insolvent act. *Donoghue's case*, ii. 466.

FRAUD, (*continued.*)
26. See BARON AND FEME, 8. *Mechanics Bank* v. *Taylor*, ii. 507.
27. Upon the trial of an issue against an insolvent debtor, upon allegations of fraud, it must appear that the intended fraud was against creditors who were such at the time of the supposed fraudulent conveyance, and at the time of trial. *Henry Knowles's case*, ii. 576.
28. Upon the dissolution of a mercantile firm, if it be agreed that the acting partner shall take all the effects, and pay all the debts of the firm, and this be known to the creditor of the firm, he cannot, with a good conscience, take a lien on the joint effects for new advances made by him to the acting partner, on his own individual account, so as to exhaust the joint effects, and leave the retiring partner liable for the old joint debt. *Mc Clean* v. *Miller*, ii. 620.
29. An absolute deed of all the household furniture, and all the stock in the shoe business, is fraudulent and void as to creditors, unless possession, *bona fide*, accompany and follow the deed; but if the goods, at the date of the deed, were actually delivered to the grantees, for a valuable consideration, and then taken into the possession of one of the grantors who was, *bona fide*, the known agent of the grantees, and who, as such, received and exercised exclusive possession, *bona fide*, publicly and notoriously for the sole use and benefit of the grantees, so that the change of possession was notorious and unequivocal, such possession was not inconsistent with the deed, and did not make it fraudulent and void as to the creditors of the grantors; but if the possession remained with the grantors jointly, although the said agent was one of them, such possession was inconsistent with the exclusive possession of such agent, and was not such a possession as gave effect to the deed, as a valid deed against the creditors of the grantors. *Reed* v. *Minor*, iii. 82.
30. See ASSETS, 2. *Lynn* v. *Yeaton*, iii. 182.
31. See DISTRESS, 14, 15. *Jenkins* v. *Calvert*, iii. 216.
32. See DAMAGES, 16. *Ringgold* v. *Bacon*, iii. 257.
33. See EQUITY, 73. *Bartle* v. *Coleman*, iii. 283.
34. The statute of frauds which requires that a declaration of trust of lands should be in writing, can be pleaded only by him who has the legal estate, and is sought to be charged with the trust. *Oneale* v. *Caldwell*, iii. 312.
35. An absolute bill of sale of chattels, is void as to creditors, if the possession does not accompany and follow the deed. *Travers* v. *Ramsay*, iii. 354; *Moore* v. *Ringgold*, iii. 434; *Williamson* v. *Ringgold*, iv. 39.
36. If the vendor and vendee of chattels live together in the same house, the possession will be presumed to be and remain in the vendor until the contrary be shown. *Travers* v. *Ramsay*, iii. 354.
37. See FREEDOM, 61, 62. *Negro Phillis* v. *Gibson*, iii. 359.
38. See FALSE PRETENCES, 2, 4, 8, 11, 13, 14, 15, 27, 31, 32. *United States* v. *Watkins*, iii. 441.
39. In an action, by the vendor, for the price of a blind horse sold by the defendant to the plaintiff, if the plaintiff proved fraud in the sale, he need not show that he offered to return the horse; for fraud vacates the contract, and the plaintiff cannot recover upon it; *aliter* where the action is brought by the vendee to recover the purchase-money paid for the horse. *Cushwa* v. *Forrest*, iv. 37.
40. A parol agreement among the purchasers at a public sale, is void under the statute of frauds. *Arden* v. *Brown*, iv. 121.
41. See EVIDENCE, 521. *Bowie* v. *Hunter*, iv. 699.
42. An absolute deed of personal property, where possession does not accompany and follow the deed, is void at common law as to subsequent purchasers without notice, although acknowledged and recorded agreeably to

FRAUD, (*continued.*)
the Maryland Act of 1729, c. 8, § 5 and 6. *Hamilton* v. *Franklin*, iv. 729.
43. See DEED, 15. *Smith* v. *Ringgold*, iv. 124.
44. A written memorandum made by the plaintiff in his day-book, not signed by either of the parties, or by any person for either of them, and proved by oral testimony only, to have been made in the presence and with the consent of the defendant, and corroborated by the defendant's letters, not, however, referring particularly to that memorandum, nor stating the terms or consideration of the contract, is sufficient to take the case out of the seventeenth section of the statute of frauds; and it is competent for the jury to connect the letters with the written entry; and the same, taken together, constitute legal and valid evidence of a written contract, in conformity with the requisitions of the statute of frauds. *Dodge* v. *Van Lear*, v. 278.
45. See BARON AND FEME, 20, 21, 22, 23, 24. *Bank of the United States* v. *Lee*, v. 319.
46. *Id.* 25. *Prather* v. *Burgess*, v. 376.
47. See DEED, 25, 26, 27, 28. *Middleton* v. *Sinclair*, v. 409.
48. *Id.* 32. *Smith* v. *Hunter*, v. 467.
49. See BILLS AND NOTES, 222. *Union Bank* v. *Corcoran*, v. 513.
50. See EVIDENCE, 562, 563, 564, 565, 566. *Linthicum* v. *Remington*, v. 546.
51. See ATTACHMENT, 106. *Noyes* v. *Brent*, v. 551.
52. See EVIDENCE, 571, 572, 573. *Harriet Jones et al.* v. *United States*, v. 647.
53. See DEED, 33. *Noyes* v. *Brent*, v. 656.
54. If a third person receive money from the debtor to pay the debt, and, in consideration thereof, promise the creditor to pay it, he is liable to the creditor in an action for money had and received; and the case is not within the statute of frauds, although there be no note nor memorandum in writing to charge the defendant. *Goddard* v. *Mockbee*, v. 666.

FREEDOM.
1. A certificate of an oath, taken by a slave owner, may be given in evidence, although it varies from the oath required by law. *Negro Rose* v. *Kennedy*, i. 26.
2. If the owner send his slave out of Virginia for three years, and then bring the slave back, it is not such a bringing into the Commonwealth, as entitles the slave to freedom under the second section of the Act of December 17th, 1792. *Negro Sylvia* v. *Coryell*, i. 32.
3. Upon a devise that the slave shall be sold for eight years, after which he should be free, the term of eight years begins to run from the death of the testator, or within a reasonable time thereafter. *Negro Basil* v. *Kennedy*, i. 199.
4. A petitioner has no right to go in search of his witnesses. *Negro Moses* v. *Dunnaho*, i. 315.
5. Bringing a slave from Alexandria to Washington, is an importation contrary to the Act of Maryland, 1796, c. 67. *Negro William Foster* v. *Simmons*, i. 316.
6. A petitioner for freedom, in custody, will not be discharged upon request of the master, unless he give security to have the petitioner forthcoming, &c., to prosecute his petition. *Ex parte Negro Letty*, i. 328.
7. Upon a petition for freedom, the Court will not require the defendant to give security for the wages of the petitioner during the litigation. *Negro Ben* v. *Scott*, v. 350.
8. An affidavit is not necessary to continue a suit for freedom at the first term. *Id.* 365.
9. Evidence that a black man has, for many years publicly acted as a free

FREEDOM, (*continued.*)
man, and been generally reputed to be free, rebuts the presumption of slavery arising from color. *Minchin* v. *Docker*, i. 370.
10. A slave coming from Virginia into Maryland, more than a year after his master, and sold, is entitled to freedom under the law of Maryland, 1796, c. 67. *Negro Moses* v. *Dunnahoo*, i. 370.
11. The owner of a slave who sues for freedom, must pay the prison-fees if he will not give the security required by the law of Virginia. *Ex parte Negro Amy*, i. 392.
12. A sale of a slave, upon the express condition that he should be free at the end of six years, is not a manumission under the Maryland law, 1796, c. 67. *Negro Fidelio* v. *Dermott*, i. 405.
13. A manumission by will is not in prejudice of creditors, if the real and personal estate are sufficient, without the value of the manumitted slave, to pay all the debts of the testator. *Ibid.*
14. A manumission by will, after a term of years, is not revoked by a codicil ordering the sale of all the testator's slaves, if, at the time of making the codicil, their term of service had not expired. *Ibid.*
15. The general issue upon a petition for freedom, is that which puts in issue the single question whether free or not. *Negro Ben* v. *Scott*, i. 407.
16. A slave imported does not gain his freedom by the omission of the master to prove to the satisfaction of the naval officer, or collector of taxes, the residence of the slave in the United States, according to the Maryland Act of April, 1783, c. 23. *Ibid.*
17. An injunction to prevent a person from taking away a colored woman who has sued for her freedom in this court, will not be granted upon the mere statement of the plaintiff's apprehension. *Negro Jenny* v. *Crase*, i. 443.
18. The promise of a slave does not bind him when free, although it be to pay money borrowed by which he gained his freedom. *Crease* v. *Parker*, i. 448.
19. Money advanced to a slave to enable him to purchase his freedom, cannot be recovered of him after his emancipation, although he acknowledge the debt after suit brought. *Id.* 506.
20. Upon a petition for freedom, the defendant may appear and disclaim, without entering into the usual recognizance. *Negro Walter Thomas* v. *Scott*, ii. 2.
21. See EVIDENCE, 208. *Queen* v. *Neale*, ii. 3.
22. *Id.* 209. *Queen* v. *Hepburn*, ii. 3.
23. If a colored man was born a slave, his being permitted to go at large without restraint, and to act as a freeman, is no evidence of his being free. *Bell* v. *Hogan*, ii. 21.
24. If the plaintiff's freedom was not so notorious that the defendant might be presumed to know it, the defendant is not liable to damages for taking up the plaintiff as a runaway, he being a colored man and *primâ facie* a slave. *Ibid.*
25. See EVIDENCE, 221. *Davis* v. *Forrest*, ii. 23.
26. *Id.* 232. *United States* v. *Thomas*, ii. 36.
27. *Id.* 253. *United States* v. *Bruce*, ii. 95.
28. The time of a slave's sailing on a voyage from Alexandria is not to be considered as part of his year's residence, so as to entitle him to freedom under the Virginia law, December 17, 1792, § 2. *Negro Robert Simmons* v. *Gird*, ii. 100.
29. If a slave escape from his master in Virginia and be found in Washington, D. C., and there sold by his master, the slave does not thereby acquire a right to freedom. *Negro Emanuel* v. *Ball*, ii. 101.
30. A slave does not acquire a right to freedom by being sent from Washing-

FREEDOM, (*continued.*)
ton to Virginia for sale, and, not being sold, brought back, after eight or nine months' absence. *Negro Violette* v. *Ball*, ii. 102.
31. If a testator by his will manumit his slaves after a certain term of service, and the widow renounces the provision made for her by the will, and adheres to her rights under the laws of Maryland, and if there be sufficient personal estate to satisfy her thirds without resorting to the slaves, they will be entitled to their freedom, although the executor should have assigned them to the widow in part satisfaction of her claim. *Negro Jos. Thompson* v. *Walter Clarke*, ii. 145.
32. If a female slave be sold, to serve the vendee for a term of years, with an obligation by the vendee to manumit her at the expiration of the term, and if, during the term she has issue, such issue is entitled to freedom. *Negro Sarah* v. *Taylor*, ii. 155.
33. In Virginia, a person who has been in possession of a slave for five years need not show the deed under which he claims title. *Love* v. *Boyd*, ii. 156.
34. A slave brought into the county of Washington, D. C., from Maryland, by his owner, and within three years thereafter mortgaged for his full value, does not thereby acquire a right to freedom. *Negro Sam Bias* v. *Rose*, ii. 159.
35. A slave cannot bind himself at law to pay money to his master, even after his freedom. *Contee* v. *Garner*, ii. 162.
36. A slave does not acquire freedom by an importation and continuance a year in Alexandria, unless he continue there one year under the same master or owner. *Negro Sam* v. *Green*, ii. 165.
37. The lapse of nine years since the plaintiff arrived at the age of twenty-one years, does not create a presumption that the oath was taken by the person who brought the plaintiff into Virginia. *Negro Sam Reeler* v. *Robinson*, ii. 220.
38. If a citizen of the United States owning a slave in Virginia, and residing there, remove to the county of Washington, D. C., with a *bona fide* intention of settling therein; and afterward cause the said slave to be brought into that county through the county of Alexandria within one year after such removal; and if the owner, within three years after such removal, sell the said slave, he thereby becomes entitled to freedom, notwithstanding the Acts of Congress of May 3d, 1802, § 7, and June 12th, 1812, § 9, the said slave having been in Alexandria county merely *in transitu*. *Negro Leonard Dunbar* v. *Ball*, ii. 261.
39. From a power to hire out a slave and receive his wages the jury cannot infer a power to sell him. *Negro Daniel* v. *Kincheloe*, ii. 295.
40. No executory contract between a master and his slave, can be enforced either at law or in equity. *Negro Joseph Brown* v. *Wingard*, ii. 300.
41. See EVIDENCE, 329. *Humphreys* v. *Tench*, ii. 337.
42. In suits for freedom, the Court will not question the jurors as they are called up to be sworn, as to their prejudices or prepossessions in favor of freedom, but leave the parties to their challenges. *Negro Matilda* v. *Mason*, ii. 343.
43. See EVIDENCE, 333. *Ibid.*
44. To obtain freedom under the Maryland Act of 1796, c. 67, the slave must have been imported for sale or to reside. *Negro William Jordan* v. *Sawyer*, ii. 373.
45. A slave, imported into the county of Washington, D. C., for sale, and sold within three years after such importation, is entitled to freedom, although the object and intention of both purchaser and seller were that the slave so purchased should be carried, forthwith, out of the District of Columbia by the purchaser. *Ibid.*

FREEDOM, (*continued.*)

46. A Virginian slave is not entitled to freedom under the Maryland Act of 1796, c. 67, by being hired to a resident of the county of Washington for a limited period. *Negro Vincent Gardner* v. *Simpson*, ii. 405.
47. A slave carried from Washington, D. C., to Virginia, by her owner, for a temporary residence only, and brought back to Washington, and there sold to a resident of Washington, does not thereby become entitled to freedom under the Maryland Act of 1791, c. 67. *Negro Amelia* v. *Caldwell*, ii. 418.
48. A slave who has been manumitted, and has lost her deed of manumission, may have relief in equity. *Negro Alice* v. *Mortè*, ii. 485.
49. Upon a petition for freedom, suggesting an apprehension that the defendant will sell and remove the petitioners from the jurisdiction of this Court, supported by affidavit, a judge of this Court, in vacation, will order an injunction without security; and upon further affidavit that the defendant had attempted to carry the petitioners away, after notice of filing their petition, the judge will order the marshal to take them into custody for safe keeping until the defendant shall give the security required by law for their forthcoming to prosecute their petition; and if the defendant will refuse to give such security, and judgment shall be rendered against him, the marshal's fees for keeping them shall be taxed in the bill of costs against the defendant. *Negro Rebecca* v. *Pumphrey*, ii. 514.
50. Children of a female slave, born while the mother was in the temporary service of a vendee for years, are slaves of the vendor or of the vendee; *quære* which? *Negro Peter et al.* v. *Cureton et al.* ii. 561.
51. A female slave purchased by the defendant at her request to enable her to obtain her freedom by repayment of the purchase-money, is not entitled to judgment in her favor until she has repaid the whole purchase-money; and if she had repaid it, *quære*, whether she would be entitled to judgment in her favor, either at law or in equity without a deed of manumission? *Negro Letty and Child* v. *Lowe*, ii. 634.
52. If the owner of a slave in the county of Washington carry her to a foreign country with intent there to reside permanently, and does reside there with her more than twelve months; and is then compelled to quit that country, and he return to the county of Washington, bringing the slave with him, there to reside, the slave, by such importation, becomes entitled to her freedom.

    But if the owner be sent to such foreign country as a special agent of the government of the United States at a stated salary, with an uncertainty, depending upon contingencies, whether he should remain there or return after accomplishing the purpose of his mission, and be compelled to leave the country before having actually settled himself as a permanent resident there, then the taking the slave with him, and bringing her back is not an importation against the Maryland Act of 1796, c. 67. *Negro Fanny* v. *Tippett*, ii. 463.
53. There can be no binding contract between a slave and his master. *Negro Fanny* v. *Kell*, ii. 412.
54. A child of a female slave is a slave although the mother has the promise of the master that she should be free at the end of a certain number of years. *Ibid.*
55. See EVIDENCE, 410, 411. *Negro William* v. *Van Zandt*, iii. 55.
56. Upon a petition for freedom by slaves entitled to emancipation at a future day, the Court refused to instruct the jury that they might find their verdict for the petitioners although that day had not yet arrived; and upon a special verdict showing their right to emancipation at a future day not yet come, the Court rendered judgment for the defendant; and refused, as a court of equity, to continue an injunction which had been served

FREEDOM, (*continued.*)
upon the marshal to prevent him from delivering the petitioners to the defendant at law during the pendency of their suit for freedom; being of opinion that the only ground of the right of the Court to interfere was the petitioners claim to *immediate* freedom, and the pendency of their suit at law. That the fears alone of the petitioners, that the defendant who was a citizen of Maryland, would violate the laws of that State, were not a sufficient ground of jurisdiction, to require of him security that he would not do so. *Negro Lizette Lee* v. *Preuss*, iii. 112.

57. See ATTACHMENT, 78. *Negro Richard* v. *Van Meter*, iii. 214.
58. If a slave be not brought into the county of Washington for sale, nor to reside permanently, he is not entitled to freedom under the Maryland Act of 1796, c. 67. *Negro Louisa* v. *Mason*, iii. 294.
59. If a citizen of Virginia, the owner of a slave there, who had resided there three whole years, remove into the county of Washington with a *bona fide* intention to settle therein, and if he bring his slave with him at the time of his removal, or within one year thereafter, to reside in the said county, such importation is not contrary to law; but the sale of such slave, in the said county, within three years after such importation may entitle him to his freedom. *Negro John Battles* v. *Thomas Miller*, iii. 296.
60. See EVIDENCE, 434. *Murray* v. *Dulany*, iii. 343.
61. *Id.* 437. *Negro Phillis* v. *Gibson*, iii. 359.
62. A deed of manumission, made to defraud the donor's wife, is void as to the negroes, as well as in regard to the wife. *Ibid.*
63. See AMENDMENT, 38. *Negro Thomas Butler* v. *Duvall*, iii. 611.
64. It seems that the 21st section of the Maryland Act of 1796, ch. 67, which requires that petitions for freedom should be only in the county where the petitioners reside under the direction of their master, is only applicable to persons claimed as slaves by residents of Maryland. So far as the object of this section is to designate which of the County Courts of Maryland should have jurisdiction, it is not applicable to this county, as there is only one county in the district to which the laws of Maryland could be applied. *Ibid.*
65. A petition for freedom is not a local action. The right is personal and accompanies the person wherever he goes. The remedy is not confined to the courts of Maryland, nor is it necessary that the right to freedom should have accrued under the laws of Maryland, nor in the county of Washington. *Ibid.*
66. A slave was brought into the county of Washington by her master, a delegate from Florida, to wait upon his family while he was attending Congress, and, at the end of the session, was left there until the meeting of the next Congress, with leave to hire herself out, and receive her wages for her own use; which she did until the return of her master who was re-elected; and who, at her request, offered to sell her to her husband, a free colored man residing in Washington, for $400, if he could raise the money; but the husband could not, and never paid it, or any part of it. The Court, *nem. con.* refused to instruct the jury that these facts were not evidence of an importation contrary to the Maryland Act of 1796, ch. 67. They also refused to instruct the jury, that upon that evidence, they ought to find their verdict for the plaintiff; but instructed them that the petitioner is not entitled to freedom under the first section of the act, unless she was brought into the county of Washington by the defendant for sale, or to reside therein; and that the circumstances stated, although found by the jury, are not conclusive evidence that the petitioner was brought into the county with such intent, or for sale; and that the residence contemplated by the 1st section of the act, is a permanent residence, as contradistinguished from a sojournment.

FREEDOM, (*continued.*)

The Court also refused to instruct the jury that the defendant's offer and agreement to sell the petitioner to her husband under the circumstances stated, was evidence of an importation contrary to the act, unless they should believe, from the evidence, that the defendant had no intention, at the time of importation, that she should be sold, or should reside in the county. *Negro Maria* v. *Joseph M. White*, iii. 663.

67. The right of a citizen of the United States to import a slave into the county of Washington, District of Columbia, under the 2d section of the Maryland Act of 1796, ch. 67, is forfeited by the sale of the slave within three years after the importation. *Negro Christopher Harris* v. *Nelly Alexander*, iv. 1.

68. Constructive emancipation of slaves by will. *Negro Harry Quando* v. *Clagett*, iv. 17.

69. Slaves escaping from Maryland, and suing here for their freedom, will not be delivered up to the person claiming to be their owner, upon security to return them to Maryland; their claim for freedom having arisen here, and their witnesses residing here. *Negro Simon & Lewis* v. *Paine's Administrator*, iv. 99.

70. Slaves, removed by their owner from Maryland, or from Georgetown, District of Columbia, to Virginia, and kept therein one whole year, are entitled to freedom under the law of Virginia, unless the owner took the oath prescribed by that law within the time thereby limited; but after the lapse of 25 or 30 years, the jury may presume that such oath was taken as prescribed, and within the time limited. *Negro Thomas Butler* v. *Gabriel Duvall*, iv. 167.

71. Slaves carried from Virginia to Maryland, with intent to reside there, are entitled to freedom.

If slaves be removed by the owner from Virginia to the county of Washington, D. C., and there sold within three years after such removal, the jury may infer that they were imported for sale; and if so, they are entitled to freedom. *Ibid.*

72. On a petition for freedom under a will, the burden of proof is on the respondent to show that the petitioner was more than 45 years of age, or that the manumission was in prejudice of creditors. *Negro Emanuel Gilbert* v. *Ward*, iv. 171.

73. A slave manumitted by will after a term of service, is not free until the term of service has expired; but the court will continue the injunction originally granted to prevent the removal of the petitioner from the jurisdiction of the Court, unless the defendant will give bond to the United States, with good security, that he will not suffer or permit him to be so removed. *Negro Kitty* v. *McPherson*, iv. 172.

74. A slave brought into the county of Washington, D. C., from Virginia, by her owner, afterwards ran away, and her owner sold her "running." *Held*, that she did not thereby lose the benefit of the provision of law in her favor. *Negro Mary and child* v. *Jane Talburt*, iv. 187.

75. A person, coming to reside here, may, under the Maryland Act of 1796, c. 67, lawfully bring his slaves with him; but if he sell them within three years after his removal, he loses the benefit of the exception in his favor, contained in the second section, and they are entitled to freedom under the first section of the act. *Ibid.*

76. Two witnesses are necessary to a deed of manumission under the Maryland Act of 1796, c. 67, § 29. *Negro Samuel* v. *Childs et al.* iv. 189.

77. If a female slave, manumitted by the last will of her owner, to be free at the age of 25 years, has a child born after the death of the testator, and before she arrives at the age of 25 years, such child is a slave. *Ibid.*

FREEDOM, (*continued.*)

78. A citizen and resident of Virginia, commeneed *bona fide* removing his furniture and family to Washington, D. C., in November, 1826, and continued such act *bona fide*, at intervals during the month of December, and up to January, 1827, and then within one year thereafter brought the petitioners into the city of Washington.

The Court held that the petitioners were not thereby entitled to freedom; but if he did perfectly, entirely, and completely remove to the city of Washington, and had rented a house, and put some part of his family and furniture into it, and claimed the privileges of a resident of that city, in or before November, 1826, although he had not removed all his family and goods, it was competent for him to bring the rest of his family and furniture to Washington after his removal; and his so bringing them after his removal, did not prevent his being a resident in or before November, 1826. *Negro Esther* v. *B. H. Buckner*, iv. 253.

79. A female slave owned in Alexandria, D. C., was removed, with her owner, to Maryland, "to reside." She ran away from her owner in Maryland, and came to Alexandria. Her owner in Maryland sold her "running," to a resident of Alexandria. *Held*, that this escape of the slave into Alexandria, was not a voluntary importation into Alexandria; and that the sale was not such a sale as could give her a right to freedom under the Maryland law of 1796, c. 67. *Negro Clara Moore* v. *Thomas Jacobs*, iv. 312.

80. The sale in the District of Columbia, of a Maryland slave brought here by her owner, does not give her a title to freedom under the Maryland Act of 1817, c. 112, which prohibits the sale to a non-resident of the state, of any slave having a contingent right to freedom. *Negro Rebecca Hobbs* v. *Magruder et al.* iv. 429.

81. See EVIDENCE, 481. *Robert Thomas* v. *Magruder*, iv. 446.

82. A Virginia slave of a Virginia owner, was loaned by the widow to her son-in-law, in Washington, D. C., until the estate should be settled, and distribution made. The slave resided in Washington, under that loan, more than a year, and was then sent back to Virginia, and upon settlement of the estate, was assigned to one of the distributees. *Held.* that the slave did not thereby acquire a right to freedom under the Maryland Act of 1796, c. 67; although the administrator, who was neither party nor privy to the lending, afterwards knew it, and did not object. *Negro Frederick Bowman* v. *Henry Barron*, iv. 450.

83. The list of slaves required by the 11th section of the Maryland Act of 1766, c. 67, must designate the sex. The name Jo. does not designate the sex. *Negro Jo. Crawford* v. *Robert A. Slye*, iv. 457.

84. A slave imported into the county of Washington, D. C., under the 11th section of the Maryland Act of 1796, c. 67, is entitled to freedom, unless recorded within three months thereafter. *Negro Keziah* v. *R. G. Slye*, iv. 463.

85. A colored child born before her mother's title to freedom has accrued and become complete, is a slave of the person entitled to the service of her mother at the time of her birth. *Negro Ann Brooks* v. *Nutt*, iv. 470.

86. See ATTACHMENT, 92, 93, 94. *Negro Thornton* v. *Davis*, iv. 500.

87. A person cannot be a resident of two States at the same time. *Negro Rachel Brent* v. *Armfield*, iv. 579.

88. In order to protect the right of a sojourner to his slave brought in under the fourth section of the Act of 1796, c. 67, it is not necessary that he should bring the slave with him.

The title of the defendant to the slave, is not protected by the fourth section, if he suffer the slave to remain two years after he himself has returned. *Ibid.*

FREEDOM, *(continued.)*

89. The right to remove slaves from one county to another in the District of Columbia, under the ninth section of the Act of Congress of June 24, 1812, is confined to the inhabitants of the county from which the slaves are to be removed. *Negro William Fenwick* v. *Tooker*, iv. 641.
90. A temporary hiring of Virginia slaves, in the county of Alexandria, D. C., with intent to evade the law in force in the county of Washington against the importation of slaves into that county, will not authorize the owner, residing in Washington, to bring them into the county of Washington, to reside therein. *Negroes Sam and Barbara Lee* v. *Elizabeth Lee*, iv. 643.
91. The Act of Congress of June 24, 1812, § 9, does not authorize an inhabitant of Washington, owning slaves in Alexandria, to remove them to Washington. *Ibid.*
92. The place to which a person has removed, with intent to remain there an indefinite time, and as a place of present domicil, is the place of his domicil, although he may entertain a floating intention to return at some future period. *Negro Herbert Harris* v. *Firth*, iv. 710.
93. If a person comes into this county, as a sojourner, and brings with him his slave, and dies here, and his executor has been prevented, by the institution of this suit, from carrying his slave out of the district, the slave is not, by such importation, entitled to freedom. *Ibid.*
94. An importation of slaves by a person who has only a life-estate in them, is an importation within the Maryland Act of 1796, c. 67, § 1. And the consent of the reversioner, to the importation, is not necessary to give freedom to the slaves thus imported. The question of the intent, with which the importation is made, is for the jury. *Negro Charles Taylor* v. *Ariss Buckner*, iv. 540.
95. The marshal has not a right to include, in his account against the United States, his imprisonment fees for persons committed as runaway servants or slaves, under the adopted laws of Maryland; but the marshal may include in his account his fees for the maintainance of petitioners for freedom committed by order of the Court for safe keeping, if they obtain their freedom; otherwise the owners must pay the fees. *Runaways, and Petitioners for Freedom*, iv. 489.
96. A certificate of freedom, is not such a "pass" as is contemplated by section nineteen of the Maryland law of 1796, c. 67. *United States* v. *Negro Alexander Vincent*, v. 38.
97. An officer of the United States, being the *bona fide* owner of a slave in the fortress Munroe, a place within the United States, but not within the jurisdiction of any one of the States, and removing thence with his family to the city of Washington, D. C., to reside therein, and bringing his slave with him, cannot lawfully sell such slave within three years after such removal and importation; and such slave, by such importation and sale, becomes free. *Negro Sally Moody* v. *Fuller*, v. 303.
98. The petitioner claimed freedom under the following clause of the will of the testatrix: "I will that George, if he behaves well until the year 1837, and continues to hire for good wages, shall, at the end of that year be free." *Held*, that it was competent for the defendant to show that the petitioner did not behave well, &c., but ran away. *Negro George Coots* v. *Morton*, v. 409.
99. Neither the complainant, nor his wife, can be examined as a witness against the defendant, in a bill for injunction to restrain the defendant from removing from the District of Columbia the plaintiff's slave who had been sold by the plaintiff to the defendant for a term of years only, at the expiration of which term the slave is to be free. *Thomas* v. *Mackall*, v. 536.

FREEDOM, *(continued.)*

100. If a Maryland slave be, with his consent, carried to Virginia, and kept there more than a year by the person to whom he was hired or loaned in Maryland, without the consent of the owner of such slave, no time is limited in which the owner must use coercive measures for recovery of the slave; and the omission to use such measures, does not give him any title to freedom; but the owner may reclaim the slave at any time. *Negro Kenedy* v. *Clarissa Purnell*, v. 552.

101. If a Maryland slave, hired or loaned in Maryland to a resident in Maryland, be carried by the person to whom he is so hired or loaned, into Virginia with a view to temporary residence only, and, for necessary attendance, and to make a transient stay, be carried or sent out of the State of Virginia again, the slave does not thereby become entitled to freedom; although all these acts were done with the consent of the owner. *Ibid.*

102. In consideration that the plaintiff would, at the defendant's request, sell and deliver to him, for the price of six hundred and sixty dollars, two negroes of the value of two thousand dollars, as slaves for life, the defendant promised the plaintiff that he would not sell them to any person south, out of the District of Columbia, and would not remove them out of the District of Columbia, south of the Potomac, and that, on such removal, the said slaves should be immediately entitled to their freedom. The plaintiff, relying on the defendant's said promise, and in consideration of six hundred and sixty dollars paid to him by the defendant, sold and delivered the said slaves to the defendant for that price. The defendant sold them to persons south of the Potomac out of the District of Columbia, and removed them out of the District of Columbia, south of the Potomac. *Held*, (on demurrer,) that the plaintiff had no cause of action against the defendant. *Corcoran* v. *Jones*, v. 607.

103. If the return of a writ of *habeas corpus* be evasive and insufficient, the party refusing to produce the bodies of the prisoners, if present in Court, will be committed until he produce them, or be otherwise discharged. If, when produced, the prisoners appear to be held as slaves, and claim to be free, and file their petition for freedom, the person claiming them as slaves, will be required by the Court to give security for their forthcoming to prosecute their claim for freedom; and if he fail to give such security, the Court will order them to be taken into custody of the marshal for safe-keeping, until their trial, or the further order of the Court. *United States* v. *Thomas N. Davis*, v. 622.

104. If a female slave be sold in Alexandria county, D. C., (to be free at thirty-one, and her children then born, and those afterwards to be born, at the same age,) a child of such slave, afterwards born before her age of thirty-one, is entitled to freedom when arrived at that age. *Negro Moses Graham* v. *Alexander*, v. 663.

105. See EVIDENCE, 575. *Negro Ann Bell* v. *Greenfield*, v. 669.

106. In the will of Maria T. Greenfield is the following clause: "I also give and bequeathe to my nephew, Gerard T. Greenfield, all my negro slaves, namely; Ben, Mansa, James, &c., (naming seventeen slaves,) provided he shall not carry them out of the State of Maryland, or sell them to any one; in either of which events, I will and desire the said negroes to be free for life."

The legatee sold one of them (the petitioner) to the defendant. *Held*, that the petitioner thereby became entitled to his freedom. *Negro James Ash* v. *W. H. Williams*, v. 674.

FREE NEGROES.

The clause in the charter of Washington which gives power to the corporation "to prescribe the terms and conditions upon which free negroes and

FREE NEGROES, (*continued.*)
mulattoes may "reside in the city," is applicable only to those persons of color who come to reside in the city after the promulgation of such terms and conditions. Neither that clause, nor the by-law of April 14, 1821, c. 133, is unconstitutional in its prospective operation. *Billy Costin* v. *Corporation of Washington*, ii. 254.

FREIGHT.
1. Trover will not lie against the master of a vessel for the cargo, unless the freight has been paid or tendered, or the payment be waived; nor, if the goods were lost, so that they did not come to the use of the defendant. *Hodgson* v. *Woodhouse*, i. 549.
2. The equitable owner of a ship in his possession has an insurable interest in the freight. *Simmes* v. *Marine Ins. Co. of Alexandria*, ii. 618.
3. See CHARTER PARTY, 5, 6. *Winter* v. *Simonton*, iii. 104.
4. See AVERAGE, 2. *Catlett* v. *Columbian Ins. Co.* iii. 192.

FRENCH TREATY.
1. See EQUITY, 103, 104, 105, 106, 107, 108, 109, 110. *Ridgway* v. *Hays et al.* v. 23.
2. See ANSWER, 7. *Dutilh* v. *Coursault*, v. 349.
3. See EQUITY, 121, 122, 123, 124. *Ibid.*
4. *Id.* 128. *Mason* v. *Cutts*, v. 465.

GAMING.
1. This Court has jurisdiction of prosecutions for gaming, under the law of Virginia, although that law directs the prosecution to be had before a justice of the peace. *United States* v. *Heinegan*, i. 50.
2. An indictment will not lie under the Virginia act, for suffering gaming in the defendant's house; because the act has given an action of debt to the informer. *United States* v. *Gadsby*, i. 55.
3. A *capias* may be issued as the first process against a person for unlawful gaming. *United States* v. *Cottom*, i. 55.
4. Upon an indictment for keeping a gaming-table in a booth in a race-field, contrary to the act of Maryland, the traverser is equally guilty whether he acted as principal, or as agent for the owner. *United States* v. *Connor*, i. 102.
5. Under the Maryland Act of 1797, c. 110, the offence of keeping a faro-table can only be committed by a tavern-keeper, or a retailer of spirituous liquors. *United States* v. *Lefevre*, i. 244.
6. The gratuitous distribution of ardent spirits at a public gaming-table, does not constitute the keeper of the table a retailer of spirituous liquors within the meaning of the Act of Maryland. *United States* v. *Mickle*, i. 268.
7. Playing at any game, even for money, is not, of itself, an offence at common law. The offence is created by statute, and can only be punished as the statute directs. *United States* v. *Willis*, i. 511.
8. The game called "equality," is a "device" prohibited by the act of Maryland, 1797, c. 110. *United States* v. *Speeden*, i. 535.
9. A public gaming-house is a public nuisance. *United States* v. *Ismenard*, i. 150.
10. See CHEAT, 1. *United States* v. *Bascadore*, ii. 25.
11. See BY-LAW, 10. *United States* v. *Wells*, ii. 45.
12. An information will not lie upon a presentment of the grand jury for public gaming, contrary to the Virginia statute of December 8, 1792, § 5, p. 175. *United States* v. *Rounsavel*, ii. 133.
13. See BY-LAW, 14. *McLaughlin* v. *Stephens*, ii. 148.
14. A note given as indemnity to the bail, who had paid off a judgment obtained against his principal for a gaming debt, and for which the bail was liable and had become fixed before he received the note, was not a

GAMING, (*continued.*)
note, the consideration of any part of which was for money or other valuable thing won at any game, within the meaning of the Virginia statute against gaming. *Welford* v. *Gilham*, ii. 556.
15. The statute of gaming may be given in evidence upon *non assumpsit* without notice. *Watson* v. *Bayley*, ii. 167.
16. Upon indictment for a nuisance in keeping a public gaming-house, the question "who dealt the cards," is too general; the witness is not bound to answer it. *United States* v. *Strother*, iii. 432.
17. Money won at billiards, is money won at play, within the 9 Anne, c. 14, § 5, which section is in force in the county of Washington, District of Columbia. *Sardo* v. *Fongeres*, iii. 655.
18. A conviction under the by-law of August 16, 1809, is no bar to an indictment for keeping a common gambling-house. *United States* v. *Holly*, iii. 656.
19. See By-law, 30. *Corporation of Washington* v. *Cooly*, iv. 103.
20. See Evidence, 455, 456. *United States* v. *Miller*, iv. 104.
21. Upon an indictment for keeping a public gaming-house, the day laid in the indictment is not material, so that it is within the time of limitation, and not within the time covered by a previous conviction or acquittal. All the acts of keeping such a house before the finding of the indictment, constitute but one offence. *United States* v. *Mc Cormick*, iv. 104.
22. The penalty for keeping a faro-table in a place occupied as a tavern, contrary to the Maryland Act of 1797, c. 110, may be recovered by indictment. *United States* v. *Evans*, iv. 105.
23. See Disorderly House, 7. *United States* v. *Dixon*, iv. 107.
24. See By-Law, 31. *Dixon* v. *Corporation of Washington*, iv. 114.
25. The first and twelfth sections of the Penitentiary Act of the District of Columbia, so far as they relate to the offences of keeping a faro-bank or other common gaming-table, are to be construed together; and when so construed, they contain a complete designation of the offence and its punishment. *United States* v. *Henry Smith*, iv. 629.
26. Neither a single act of play, at a gaming-table called a sweat-cloth, at the races, nor even a single day's use of it on the race-field, is a keeping of a common gaming-table within the Penitentiary Act of the District of Columbia. *Id.* 659.
27. An indictment under the Penitentiary Act of the District of Columbia, for keeping a faro-table, must charge the offence to be, either the keeping of a common gaming-table; or must positively charge it to be the keeping of a faro-bank; not "a gaming-table called a faro-bank." *United States* v. *Cooly*, iv. 707.
28. An indictment, charging that the defendant did keep a certain gaming-table called a faro-bank, is not sufficient under the Penitentiary Act of the District of Columbia. *United States* v. *Milburn*, iv. 719.
29. See Disorderly House, 15. *Ibid.*
30. In a criminal case it is not necessary, on the part of the prosecution, to summon witnesses to prove the sanity of the accused, as every person is presumed to be of sound mind until the contrary is proved.
The accused has no right to send witnesses to the grand jury to prove merely exculpatory matter. *United States* v. *Richard Lawrence*, iv. 514.
31. An indictment for keeping "a faro-bank" is bad, unless it aver the faro-bank to be a common gaming-table. *United States* v. *Ringgold*, v. 378.
32. An indictment for keeping "a certain public gaming-table called faro-bank," is bad. *Ibid.*
33. An indictment for keeping "a gaming-table" is also bad. *Ibid.*
34. An indictment for keeping "a gaming-table" is insufficient; it should charge the keeping of a common gaming-table. *United States* v. *George Milburn*, v. 390.

GAMING, (*continued.*)
35. An indictment for keeping a faro-bank, is also bad; it should be "a common faro-bank;" or "a faro-bank, the same being a common gaming-table." *Ibid.*

GAOL.
1. The Levy Court of Washington county, District of Columbia, is not bound to repair the gaol erected by the United States in that county. *Levy Court* v. *Ringgold*, ii. 659.
2. The marshal had no right to expend the funds of the Levy Court of Washington county, in repairs of the gaol, without their order. *Ibid.*

GARNISHEE.
1. The Court will set aside a judgment against a garnishee obtained by surprise, and will quash the execution issued thereon. *Homans* v. *Coombe*, ii. 681.
2. A Court of Equity will grant an injunction to stay execution of a judgment obtained against a garnishee by surprise, and will continue it until final hearing. *Baker & Dyer* v. *Glover*, ii. 682.

GEORGETOWN.
1. The Corporation of Georgetown, D. C., had no power in 1803 to grant retailing licenses. *United States* v. *Kaldenbach*, i. 132.
2. The original by-laws of Georgetown, need not be made under the corporate seal. *Holmead* v. *Fox*, i. 138.
3. A constable of the county of Washington, residing in Georgetown, is a constable of the town of Georgetown and precincts, within the meaning of the by-law concerning hogs. *Ibid.*
4. An indictment will not lie for forestalling the Georgetown market, contrary to the by-law. *United States* v. *Kennedy*, i. 312.
5. The Mayor of Georgetown may, within the town, do any act which a county justice of the peace can do in his county. *Hodgson* v. *Mountz*, i. 366.
6. The Corporation of Georgetown cannot impose a penalty on hack-owners residing out of Georgetown for bringing passengers into Georgetown from the city of Washington, if they take only the city prices for driving to the verge of the city. *Lenox* v. *Corporation of Georgetown*, i. 608.
7. The Georgetown Bridge Company is bound to repair the road to the Little Falls. *United States* v. *Georgetown Bridge Company*, iii. 369.

GOOD BEHAVIOR.
After acquittal, the Court will not require the prisoner to give security of his good behavior. *United States* v. *Venable*, i. 417.

GOODS AND CHATTELS.
Bank-notes are not goods and chattels. *United States* v. *Morgan*, i. 278.

GRAND JURORS.
1. Witnesses cannot be sent to the grand jury on the part of the accused; nor can a grand juror be withdrawn, after he is sworn, for a cause which existed before he was sworn. *United States* v. *Palmer*, ii. 11.
2. See FALSE PRETENCES, 2-32. *United States* v. *Watkins*, iii. 441.
3. See ABATEMENT, 10. *United States* v. *White*, v. 457.

GUARDIAN.
1. The Court will appoint a guardian *ad litem* to defend an infant defendant. *Barclay* v. *Govers*, i. 147.
2. If an infant defendant be brought into court, a guardian *ad litem* may be appointed without commission. *Reinhart* v. *Orme*, i. 244.

GUARDIAN, (*continued.*)

3. A guardian appointed in one county in Maryland is competent to give a valid receipt for the purchase-money of land in another county. *Brooke* v. *Potowmack Company*, i. 526.
4. A guardian is liable for waste and entitled to credit for permanent improvements, and the education of the children. *Williams* v. *Barrett*, ii. 673.
5. See APPEAL, 19, 20, 21. *Mauro et al.* v. *Ritchie*, iii. 147.
6. The authority of a guardian appointed by the Orphans' Court under the power given by the Maryland Act of 1798, ch. 101, c. 12, § 1, continues until the full age of the infant; and such guardian cannot be removed, unless for refusal to give security when required by the Orphans' Court. *Ibid.*
7. After a guardian has been appointed by the Orphans' Court, the infant has no right at the age of fourteen to choose another. *Ibid.*
8. By the common law it was only where there was a guardian in socage or for nurture, (in which case the guardianship continued only till fourteen,) that the infant had a right, at that age, to choose a guardian. *Ibid.*
9. Different kinds of guardian; 1st, in chivalry; 2d, in socage; 3d, by nature; 4th, for nurture; 5th, by statute; 6th, by custom; 7th, by the chancellor; 8th, by the ecclesiastical courts; 9th, *ad litem;* and 10th, by election. *Ibid.*
10. Of the four kinds of guardian at common law, one only exists in Maryland namely, guardian by nature. Guardian by nature, at the common law, has no authority over the lands of an infant, and his authority over the person of the infant continues until he is of full age. *Ibid.*
11. The English Statutes of 4 and 5 Phil. & Mary c. 8; and 12 Car. 2, c. 24, so far as they authorize a father, by his will to appoint a guardian to his infant children, are in force in Washington county, D. C. *Ibid.*
12. Under the Maryland Statutes, it seems that the guardian by nature has the custody of the estate as well as of the person of the infant until the age of twenty-one; but the father was the only guardian by nature recognized by those statutes. *Ibid.*
13. If the infant have no father nor testamentary guardian, the Orphans' Court has the power to appoint a guardian to any infant who has an interest in lands by descent or devise, or is entitled to a legacy, or distributive share of the personal estate of an intestate. *Ibid.*
14. By the term, "Natural guardian" in the Act of 1798, must be intended such a natural guardian as is entitled to the guardianship of the estate as well as of the person of the infant. *Ibid.*
15. The Act of 1798, does not, in any manner recognize the right of the infant to choose a guardian at any age. *Ibid.*
16. The Orphans' Court, whenever it has authority to appoint a guardian, may appoint him to the full age of the infant. *Ibid.*
17. An infant cannot choose a guardian, nor can the Court appoint a guardian, unless the infant be personally brought before the Court. *Ibid.*
18. A guardian cannot be removed without notice and citation to show cause. *Ibid.*
19. When the record, set forth in the declaration, is not the foundation of the action, but only matter of conveyance, or inducement, *nul tiel record* is not a good plea, for it is not an answer to the whole count. *Ibid.*
20. When the record is showed forth in the declaration, the defendant may deny the operation thereof. *United States* v. *Little*, iii. 251.
21. An order of the Orphans' Court, that J. T. R. give bond as guardian to J. W. O., is not an appointment of J. T. R. to the office of guardian. *Ibid.*
22. A guardian, appointed by the Orphans' Court, continues until the infant

GUARDIAN, (*continued.*)
arrives at full age. And he has not a right, at the age of fourteen, to choose another. *Smoot* v. *Bell*, iii. 343.
23. A guardian appointed in Alexandria, who was also appointed by the Orphans' Court in Pennsylvania, and gave bond there, is not bound to account in Alexandria, for money of his ward received in Pennsylvania. *Ibid.*
24. A guardian appointed by the Orphans' Court of the county of Washington, D. C., is liable, upon his bond given here, for money received by him in Maryland, for the use of his ward. *United States* v. *Nicholls*, iv. 191.
25. A guardian, whose authority is revoked, is bound by his bond to pay over the money in his hands to the person appointed by the Orphans' Court to receive it, although the person so appointed has not given bond as guardian. *Id.* 290.
26. In debt upon a guardian's bond taken by the Orphans' Court in the county of Washington, the defendant, in order to show that the Orphans' Court had no authority or jurisdiction to take the bond, offered evidence to prove that no land descended, nor was devised to the orphan in that county; and that he was not entitled to a distributive share of the personal estate of any intestate, or to a legacy or bequest under the last will and testament of any person on whose personal estate any administration had been granted in that county; and that no friend of the orphan had applied to the Orphans' Court to require the guardian to give bond. But this Court refused to receive such evidence. *United States, use of Gody*, v. *Bender*, v. 620.
27. A guardian here is liable to account for money of his ward received in Maryland for land sold in Maryland. *Ibid.*
28. If a guardian receive a negotiable note in payment of a debt due to his ward, he is liable for the same to his ward, although he has not received the money. *Ibid.*

GUARANTY.
1. See BILLS AND NOTES, 196. *Dobbins* v. *Bradley*, iv. 298.
2. When credit is given upon a guaranty, notice thereof should be given to the guarantor, in a reasonable time thereafter. Where six months' credit was given upon the guaranty, five days notice was too short. *Ibid.*
3. See ASSIGNMENT, 19. *Brown* v. *Decatur*, iv. 477.
4. In an action upon a letter of guaranty, the plaintiff must show that he gave notice, in a reasonable time to the defendant, of his acceptance of the guaranty, and of the value of the articles furnished. *Burns* v. *Semmes*, iv. 702.
5. Although the person in whose favor the letter of guaranty is given has passed to the credit of the defendant, in account, the value of the goods obtained upon the guaranty, and that account has been settled, yet the plaintiff cannot recover on the count for money had and received. *Ibid.*
6. The Court will not give an instruction not warranted by the evidence. *Ibid.*

HABEAS CORPUS.
1. Upon petition for a writ of *habeas corpus ad subjiciendum*, the prisoner must produce a copy of the warrant of commitment, or an affidavit that the officer refused to give a copy. *Harrison's case*, i. 159.
2. An attachment for not returning a *habeas corpus*, will not be issued until three days shall have expired after service of the writ. *United States* v. *Bollman*, i. 373.
3. When a debtor is in the prison-bounds, the Court will not award a *habeas corpus* to discharge him on the ground that the creditor has refused to pay his daily allowance. *Wilson* v. *Marshal of District of Columbia*, i. 608.

HABEAS CORPUS, (*continued.*)

4. A warrant of commitment must be under seal of the committing magistrate, and must show a charge upon oath. *Bennett's case*, ii. 612.
5. If the commitment be informal or insufficient, the Court will discharge the prisoner upon that commitment, but will recommit him in proper form, if there be sufficient cause. If the commitment be regular and formal, and for an offence for which the committing magistrate had a right to commit, it seems that the Court, upon *habeas corpus*, will, at the request of the prisoner, issue a *certiorari* to the magistrate, to certify the informations, examinations, and depositions, taken by, and remaining with him, in relation to the commitment; and if none such shall have been taken, will summon him to appear and state, upon oath, the evidence upon which he issued his warrant of commitment; and upon ascertaining such evidence, will consider the same; and will bail, remand, or discharge the prisoner, unless he shall desire that the witnessess may be re-examined; in which case he will be remanded until the witnesses can be had. *Ibid.*
6. If a debtor, who has been discharged under the Insolvent Act of the District of Columbia, be arrested upon a *ca. sa.* issued by a justice of the peace, for a debt accruing before his discharge, this Court may discharge him upon *habeas corpus*. *Reardon's case*, ii. 639.
7. See FREEDOM, 103. *United States* v. *Davis*, v. 622.

HACKNEY-COACHES.

1. The Corporation of Washington had authority, under the charter of 1802, § 7, to regulate and license hackney-coaches. *Mayor of Washington* v. *Wheaton*, i. 318.
2. See GEORGETOWN, 6. *Lenox* v. *Corporation of Georgetown*, i. 608.

HAWKERS AND PEDLERS.

See BY-LAW, 25. *Corporation of Washington* v. *Townsend*, iii. 653.

HARBOR-MASTER.

See FEES, 16. *Shinn* v. *McKnight*, iv. 134.

HIGHWAY ROBBERY.

No road in Virginia is a highway, within the statute which takes away the benefit of clergy in certain cases, unless it be a public road laid out according to law, of which no evidence can be received but the record. *United States* v. *King*, i. 444.

HIRE.

If I hire a slave for a year, and he be arrested for theft at any time during the year, and imprisoned therefor during the residue of the term for which I have hired him, I must pay the stipulated hire, and suffer the loss of service. *Scott* v. *Bartleman*, ii. 313.

HORSE-STEALING.

1. Horse-stealing in the District of Columbia is punishable as ordinary larceny under the Act of Congress of April 30, 1790, although by the Acts of Maryland of 1793, ch. 57, § 10, and 1799, ch. 61, § 1 and 3, the punishment is death or labor on the roads in Baltimore county. *United States* v. *Samuel Black*, ii. 195.
2. Where the punishment may be death, the Court will allow peremptory challenge. *Ibid.*
3. A prisoner indicted for horse stealing in Washington County, D. C., is not entitled to the right of peremptory challenge. *United States* v. *Krouse*, ii. 252.

IGNORANCE OF THE LAW.

See CORPORATION OF WASHINGTON, 31. *Corporation of Washington* v. *Barber*, v. 157.

IMPRESSMENT.

A commanding officer of the militia has no lawful authority to impress the horse of a citizen, even in time of war. *Jacobs* v. *Levering*, ii. 117.

IMPRISONMENT.

1. Upon an indictment, at common law, for a riot in Alexandria County, the term of imprisonment is not to be assessed by the jury. *United States* v. *McFarlane et al.* i. 163.
2. Imprisonment is not a necessary part of the punishment of a riot at common law. *Ibid.*
3. Upon conviction of cheating at cards, the Court will add imprisonment to the fine assessed by the jury. *United States* v. *Bascadore*, ii. 25.

INDEBITATUS ASSUMPSIT.

1. If work and labor be done according to a special agreement, the plaintiff may recover upon a general *indebitatus assumpsit*. *Pipsico* v. *Bontz*, iii. 425.
2. In Alexandria, a colored man is not a competent witness for or against a white man. *Ibid.*
3. See CONTRACT, 43. *Fresh* v. *Gilson*, v. 533.

INDEMNITY.

See EQUITY, 96. *Stewart* v. *Callaghan*, iv. 594.

INDICTMENT.

1. In an indictment for selling whiskey, the day is not material. *United States* v. *Burch*, i. 36.
2. In an indictment for keeping a disorderly house the time is not material. *Id.* 36.
3. The Court in Washington County may order an indictment to be sent to the grand jury, without a previous presentment for the same offence. *United States* v. *Madden*, i. 45.
4. All the acts of selling spirituous liquors before conviction, constitute but one offence; and the day laid in the indictment is not material, if it be within twelve months before filing the information. *Commonwealth* v. *Smith*, i. 46.
5. An indictment will not lie, under the Virginia act, for suffering gaming in the defendant's house; because the act has given an action of debt to the informer. *United States* v. *Gadsby*, i. 55.
6. No information or indictment will lie upon a by-law of the Corporation of Alexandria. *Commonwealth* v. *Howard*, i. 61.
7. The want of the name of a prosecutor at the foot of the indictment is no ground for arresting the judgment. *United States* v. *Jamesson*, i. 62.
8. The name of a prosecutor must be written at the foot of an indictment for keeping a bawdy-house. *United States* v. *Mary Rawlinson*, i. 83.
9. On a trial for larceny of the goods of T. L. evidence that they were the property of a deceased person in the possession and management of T. L. will support the indictment. *United States* v. *Barlow*, i. 94.
10. *Quære*, whether, upon an indictment on a statute charging an act to be done knowingly, the *scienter* must be proved if the statute does not use the word "knowingly"? *United States* v. *Mc Cormick*, i. 106.
11. An indictment may be sustained against a constable for acting as such without giving bond. *United States* v. *Evans*, i. 149.
12. Upon a joint indictment the judgment must be several. *United States* v. *Ismenard*, i. 150.
13. Riot and assault and battery may be joined in the same indictment. *United States* v. *McFarlane et al.* i. 163.
14. A prisoner indicted for counterfeiting a note of the Bank of the United States, is not entitled, under the Act of Congress, of April 30, 1790, § 29, to a copy of the indictment, and a list of the witnesses two days before

INDICTMENT, (*continued.*)
pleading, although the offence is made felony by the statute. *United States* v. *Williams & Ray*, i. 178.
15. In an indictment for forgery of a bill, it is not necessary to set forth the indorsements. *United States* v. *Peacock*, i. 215.
16. An indictment will not lie for forestalling the Georgetown market contrary to the by-law. *United States* v. *Kennedy*, i. 312.
17. It is no ground of general demurrer to an indictment for misdemeanor under the laws of Virginia of 1792 and 1795, that the name of a prosecutor is not written at its foot. *United States* v. *Sanford*, i. 323.
18. An indictment upon the Maryland Act of 1793, ch. 35, for stealing bank notes, must state of what bank the stolen notes were, and whether the bank was incorporated by the United States, or by a particular state. It is not sufficient to make the averment in the words of the act. *United States* v. *Porte*, i. 369.
19. When a statute merely alters the punishment of a common law offence, the statutory punishment may be inflicted, although the indictment does not conclude *contra formam statuti*. *United States* v. *Norris*, i. 411.
20. If several persons, jointly concerned in an assault and battery, be separately indicted, each as for his own offence, and all tried at the same time by the same jury, one of the defendants may be examined as a witness for the others. *United States* v. *Hunter et al.* i. 446.
21. In order to make those liable who were only present, aiding and abetting, it is not necessary that they should be indicted jointly nor with a *simul cum*. *Ibid.*
22. The finding of an informal presentment, is not the finding or instituting of an indictment so as to take the case out of the act of limitations of public prosecutions of the 30th of April, 1790, § 32. *United States* v. *Stacum*, i. 485.
23. Upon a presentment by a grand jury, the Court will order an indictment to be sent up without the name of a prosecutor, upon the suggestion of the Attorney of the United States. *United States* v. *Dulany*, i. 510.
24. The prosecutor, whose name is written at the foot of the indictment, is not a competent witness for the prosecution. *United States* v. *Birch*, i. 571.
25. In an indictment for selling spiritnous liquors, the day is not material. *Ibid.*
26. An indictment, against a minister for joining in marriage persons under age, without the consent of their parents or guardians, contrary to the Act of Maryland, 1777, c. 12, § 9, must aver that the defendant was, at the time of solemnizing the marriage, a minister authorized and qualified according to the act, to celebrate the rite of matrimony; it must also, if it contain an averment that it was done without consent of the parents, aver that there was a parent then living, and that there was no guardian who could consent, or that it was without the consent of the guardian, as well as without the consent of the parents. *United States* v. *McCormick*, i. 593.
27. When a statute inflicts a penalty upon persons of a certain description only, it is necessary, in an indictment upon that statute, to aver all the facts necessary to show that the defendant was a person of that description at the time of committing the act. *Ibid.*
28. The addition "clerk" to the name of the defendant, is not a sufficient averment that he was, at the time of the marriage, a minister duly authorized to celebrate that rite. *Ibid.*
29. When negative words constitute part of the description of the offence, they must be used in the indictment. *Ibid.*
30. An indictment for forcibly taking bank-notes from another, must state whose property they were. *United States* v. *McNemara*, ii. 45.

INDICTMENT, (*continued.*)
31. The Court will not quash an indictment because there was no previous presentment, or order of the Court. *United States* v. *Tompkins*, ii. 46.
32. Two or more counts for misdemeanor may be joined in one indictment. *United States* v. *Porter*, ii. 60.
33. The person defrauded is a competent witness for the prosecution upon an indictment for the fraud. *Ibid.*
34. Upon an indictment for barratry, no evidence can be given of specific acts, without notice. Notice given after the commencement of the trial is too late. *Ibid.*
35. A witness is incompetent who has been convicted of a conspiracy to defraud the creditors of an insolvent debtor. *Ibid.*
36. A grand juror may be required to testify as to the evidence given to the grand jury. *Ibid.*
37. Fraud is not indictable unless it concern the public, or be committed by false tokens, or false pretences. *Ibid.*
38. The Court will strike an attorney from the roll for malpractice, although it be not indictable. *Ibid.*
39. See FORGERY, 5. *United States* v. *Wright*, ii. 68.
40. See EXTORTION. *United States* v. *Chenault*, ii. 70.
41. An indictment will not lie against an inhabitant of the city of Washington, for retailing spirituous liquors within the city. *United States* v. *Dixon*, ii. 92.
42. See FORGERY, 6. *United States* v. *Bennett Smith*, ii. 111.
43. An indictment will not lie against a person for dealing with a slave without his master's consent, the statute having provided a different mode of prosecution. *United States* v. *Pickering*, ii. 117.
44. The jury may find the prisoner guilty of simple larceny upon an indictment for feloniously breaking a storehouse, and taking therefrom goods of the value of more than four dollars, against the Virginia statute of 26 December, 1792, which takes away the benefit of clergy. *United States* v. *Read*, ii. 198.
45. In an indictment under the eighteenth section of the Act of the 30th of April, 1810, "regulating the post-office establishment," against a person employed in a department of the General Post-office, charging him with embezzling of letters with which he was intrusted, and stealing therefrom sundry bank-notes, it is not necessary to aver that the letters were intended to be conveyed by post, nor to describe particularly the letters or the bank-notes, it being averred that the particular description of the letters and of the bank-notes was unknown to the grand jurors. *United States* v. *Richard Golding*, ii. 212.
46. It is not a valid objection to the indictment, that the embezzlement of the letters and stealing therefrom the bank-notes, are charged in the same count. *Ibid.*
47. See FORGERY, 10, 11. *United States* v. *Book*, ii. 294.
48. Cruelly, inhumanly, and maliciously to cut, slash, beat, and ill treat his own slave, is an indictable offence. *United States* v. *Brockett*, ii. 441.
49. See FALSE PRETENCES. *United States* v. *Carico*, ii. 446.
50. See EVIDENCE, 374. *United States* v. *Rutherford*, ii. 528.
51. *Id.* 394. *United States* v. *Wade & Young*, ii. 680.
52. *Quære*, whether an indictment will lie at common law for enticing away a slave. *United States* v. *Negro Pompey*, ii. 246.
53. Public cruelty to a horse is an indictable offence. *United States* v. *Logan*, ii. 259.
54. See EVIDENCE, 213. *Veitch & Co.* v. *Basye*, ii. 6.
55. See BANK, 13, 14, 15. *United States* v. *Forrest*, iii. 56.
56. The Court in Alexandria will quash an indictment for misdemeanor, unless

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the name of a prosecutor be indorsed thereon, although the defendant should have been bound by a recognizance before a justice of the peace to appear in this Court to answer for the offence. *United States* v. *Hetrigle*, iii. 179; *United States* v. *Hollingsberry*, iii. 645.
57. If two be separately indicted for the same theft, and one be convicted, it is necessary for the United States upon the trial of the other to prove that it was a joint theft, and that both were present at the taking of the goods, but it is not necessary to charge in the indictment, that the theft was joint; they may be indicted jointly or severally, as both are principals. If there be a doubt, as to one, whether he was present, he must be acquitted upon an indictment charging him as principal. *United States* v. *Holland*, iii. 254.
58. See DEMURRER, 21, 22, 23, 24. *United States* v. *Watkins*, iii. 441.
59. See CHALLENGE, 25. *Ibid.*
60. See FALSE PRETENCES, 5, 6, 7, 8, 9, 11, 23. *Ibid.*
61. See COMMON SCOLD, 1, 2. *United States* v. *Ann Royal*, iii. 618, 620.
62. See FALSE PRETENCES, 33. *United States* v. *Hale*, iv. 83.
63. *Id.* 34. *United States* v. *Plympton*, iv. 309.
64. See GAMING, 21. *United States* v. *Mc Cormick*, iv. 104.
65. *Id.* 21. *United States* v. *Evans*, iv. 105.
66. See FOREIGN MINISTER, 1. *United States* v. *La Fontaine*, iv. 173.
67. See EVIDENCE, 464. *United States* v. *Hall*, iv. 229.
68. See CONTEMPT, 3. *United States* v. *Beale*, iv. 313.
69. *Quære*, whether an indictment will lie for assault and battery upon "a person unknown?" not "unknown to the jurors"? *United States* v. *Davis*, iv. 333.
70. See ASSAULT AND BATTERY, 14. *United States* v. *Turley*, iv. 334.
71. See FELONY, 7. *United States* v. *Larned*, iv. 335.
72. See FORGERY, 21. *Ibid.*
73. To charge the prisoner as for a second offence, an averment "that on the 2d of October, 1832, at a Circuit Court for the District of Columbia, for the county of Alexandria, the prisoner was tried and convicted of larceny, as by the record of the said court doth appear," without averring that the conviction was by judgment, and reciting the record of conviction, &c., is not a sufficient averment to justify the Court in sentencing the prisoner to the penitentiary for stealing fifty-five cents. *United States* v. *Henry Thompson*, iv. 335.
74. A conviction for stealing a pocket-book, is a conviction of stealing all that it contained at the time of the theft, belonging to the same person. *United States* v. *Negro John*, iv. 336.
75. Nine cows, belonging to divers persons, were stolen by the defendant from the commons in and about the city of Washington; and the grand jury found nine separate indictments. Six of the cows were averred to have been stolen on the 14th of October, 1833; the others on different days. The Court refused to quash any of those indictments. *United States* v. *Joseph Goddard*, iv. 444.
76. See BILLS AND NOTES, 202. *United States* v. *John Lee*, iv. 446.
77. *Quære*, whether a promissory note, found in the hand of the maker thereof, with two blank indorsements, can be considered as the property of the maker, and whether it be of any value to him. If the note was in the pocket-book of the maker of the note at the time the pocket-book was stolen by the defendant, a conviction of stealing the pocket-book is a bar to a subsequent indictment for stealing the note. *Ibid.*
78. The want of a prosecutor's name upon the indictment, is no ground for arresting the judgment. *United States* v. *Henry Lloyd*, iv. 464.
79. A *nolle prosequi*, without the consent of the defendant, after the jury is

INDICTMENT, (*continued.*)
sworn, is equivalent to an acquittal, and may be so pleaded. *United States* v. *Farring*, iv. 465.
80. A motion, to quash the indictment for want of the name of a prosecutor, is too late after verdict.
The Court will not quash an indictment for want of the name of a prosecutor if the witnesses were called for by the grand jury; but will quash the indictment where the name of a prosecutor was not written upon it, and no order of the Court to send the witnesses to the grand jury, and it does not appear that the witnesses were called for by the grand jury. *United States* v. *Henry Lloyd*, iv. 467.
81. See CRUELTY, 3. *United States* v. *R. B. Lloyd*, iv. 472.
82. *Id.* 4. *United States* v. *D. Jackson*, iv. 483.
83. *Id.* 5. *United States* v. *George Cross*, iv. 603.
84. In a case of murder, the Court, at the request of the prisoner's counsel, will ask each juror, as he comes to be sworn, "whether he has formed and delivered any opinion as to the guilt of the prisoner upon this indictment." *United States* v. *Joseph Woods*, iv. 484.
85. Upon a trial for murder, the declarations of the deceased not made *in extremis*, or with a settled conviction that she is about to die, cannot be given in evidence. *Ibid.*
86. See EVIDENCE, 488, 489, 490, 491. *Ibid.*
87. See BAIL, 89. *United States* v. *Robert Clark*, iv. 506.
88. *Id.* 90. *United States* v. *Richard Lawrence*, iv. 518.
89. *Id.* 93. *United States* v. *Fleet Smith*, iv. 727.
90. An indictment for manslaughter need not contain the words "in the fury of his mind." *United States* v. *Henry Frye*, iv. 539.
91. The jumping on board a boat then in the custody of the prisoner, after being warned not to do so, and with intent to do him some great bodily harm, and actually assaulting him with that intent, and putting the prisoner in fear of such great bodily harm, will excuse the homicide; but the jumping on board of the boat under the circumstances stated, was not an actual assault upon the prisoner, who was fifteen feet from the deceased at the time of the shooting. *Ibid.*
92. A slave convicted of manslaughter, is, by the law of Virginia, in force in the county of Alexandria, D. C., to be burnt in the hand and publicly whipped. *Ibid.*
93. See EVIDENCE, 502. *United States* v. *Davidson et al.* iv. 576.
94. A slave convicted of larceny in Alexandria, is to be punished by whipping, although not charged, as a slave, in the indictment. *United States* v. *Negro Nelson*, iv. 579.
95. An indictment must conclude against the government of the United States. *United States* v. *Boling*, iv. 579.
96. An indictment under the Penitentiary Act of the District of Columbia, for stealing a bank-note, must state the amount as well as the value of the note. *United States* v. *Richard Barry*, iv. 606.
97. One hundred silver coins of the value of seventy-five dollars, is a sufficient description of the money stolen. *Ibid.*
98. *Quære*, whether it is an indictable misdemeanor to attempt to commit an offence, which, if carried into execution, would not go to corrupt the fountain of justice, of legislation, or the executive administration of the law, or involve actual violence or breach of the peace? It makes no difference, whether the attempted offence be at common law or created by statute. *United States* v. *Henning*, iv. 608.
99. To attempt to sell a free mulatto as a slave for life, is not an indictable offence in the District of Columbia. *Ibid.*
100. In an indictment for perjury, the materiality of the facts sworn to, must ap-

INDICTMENT, (*continued.*)
pear in the indictment, either by averment, or by a statement of facts which show their materiality. *United States* v. *Cowing*, iv. 613.
101. The Court refused to quash an indictment for a conspiracy to cheat by selling a free negro as a slave. *United States* v. *Spalding et al.* iv. 616.
102. See EVIDENCE, 502. *United States* v. *Larkin*, iv. 617.
103. Unnecessary words, not altering the nature of the charge, inserted in the indictment by the grand jury, may be rejected as surplusage, after verdict. *Ibid.*
104. The time and place of conspiracy must be stated in the indictment. *United States* v. *Soper et al.* iv. 623.
105. See BARON AND FEME, 15. *United States* v. *Murphy*, iv. 681.
106. See GAMING, 27. *United States* v. *Cooly*, iv. 707.
107. *Id.* 28. *United States* v. *Milburn*, iv. 719.
108. See DISORDERLY HOUSE, 14. *Ibid.*
109. In an indictment under the Penitentiary Act of the District of Columbia, for stealing a bank-note, it is not necessary to state that it is a bank-note "for the payment" of money, or other valuable thing. *United States* v. *McDaniel*, iv. 721.
110. See BARON AND FEME, 17. *United States* v. *Parsons et al.* iv. 726.
111. An indictment for stealing "sundry pieces of silver coin of the value of twenty-five dollars," is too vague. *United States* v. *Kurtz*, iv. 674.
112. A count for stealing, and a count for receiving stolen goods, may be contained in the same indictment; and the Attorney of the United States will not be put to his election upon which to proceed. *United States* v. *Ralph Prior*, v. 37.
113. See CONFESSION, 13. *Ibid.*
114. See ASSAULT AND BATTERY, 22, 23, 24. *United States* v. *Herbert*, v. 87.
115. See DISORDERLY HOUSE, 16. *United States* v. *Columbus*, v. 304.
116. See BANK, 24, 25, 26. *United States* v. *Noble*, v. 371.
117. See GAMING, 31, 32, 33. *United States* v. *B. Ringgold*, v. 378.
118. *Id.* 34, 35. *United States* v. *Milburn*, v. 390.
119. See DOG, 3, 4. *United States* v. *McDuell*, v. 391.
120. See ABATEMENT, 10. *United States* v. *R. H. White*, v. 457.
121. An indictment upon the first section of the Act of Congress of the 7th of July, 1838, c. 212, "to restrain the circulation of small notes," &c., should aver that the note passed, or offered to be passed, was "paper currency." *Stettinius* v. *United States*, v. 573.
122. An indictment upon the second section of that act, should aver that the note issued was "paper medium, evidently intended for common circulation." *Ibid.*
123. The passing of a note of less denomination than five dollars is not an offence against the statute, unless it be "paper currency," or "paper medium, evidently intended for common circulation." The offence, under the statute, does not consist in circulating paper as currency, but in passing paper currency, — that which is already currency or evidently intended for common circulation. *Ibid.*
124. It is no justification for passing such paper as the act prohibits, that it was passed in payment of a *bona fide* debt; nor that it was passed with intent that it should be carried out of the district; nor that the defendant was agent of the railroad company. *Ibid.*
125. The term "bank-bill," as used in the act, does not, of itself, purport to be paper currency, without a special averment to that effect. *Ibid.*
126. See BAIL, 94, 95. *United States* v. *R. H. White*, v. 368.

INFANCY.
1. The Court will appoint a guardian *ad litem* to defend an infant defendant. *Barclay* v. *Govers*, i. 147.

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2. If an infant be brought into Court, a guardian *ad litem* may be appointed without commission. *Reinhart* v. *Orme*, i. 244.
3. Upon the trial of an issue upon the plea of infancy to an action upon a promissory note, the plaintiff is not bound to produce the note. *Davidson* v. *Henop*, i. 280.
4. Infancy cannot be given in evidence upon *nil debet*. The promissory note of an infant is voidable, not void. *Young* v. *Bell*, i. 342.
5. An infant cannot bind himself as apprentice; nor can the master assign the indentures of apprenticeship. *Handy* v. *Brown*, i. 610.
6. No contract of an infant is so absolutely void that it cannot be affirmed and made valid by the infant at full age. *Hyer et al.* v. *Hyatt et al.* iii. 276.
7. An acknowledgment after suit brought, will not avail the plaintiff, although made by the defendant after full age. *Ibid.*
8. All contracts by infants are voidable, except for necessaries, and even then the plaintiff can only recover the value of the articles furnished; the infant not being competent to bind himself absolutely as to price. *Ibid.*
9. See EQUITY, 51, 52, 53. *Hastings* v. *Granberry*, iii. 319.
10. *Id.* 83. *Nicholson* v. *McGuire*, iv. 194.
11. An infant, after the death of his father, cannot recover his wages for services performed in the lifetime of his father, under a contract made with the father, who has a right to dispose of his earnings, or any part thereof. *Roby* v. *Lyndall*, iv. 351.
12. The father had assigned to the defendant a right to receive, to his own use, one half of the boy's wages, in consideration of the defendant's engaging to teach him the use of carpenter's tools; and the defendant had received the same; *Held*, that the boy could not recover it in an action for money had and received. It makes no difference that the services were performed for the United States and in their navy-yard. *Ibid.*
13. Infants whose property has been sold for taxes may redeem at any time within one year after arriving at full age. *Mockbee* v. *Upperman*, v. 535.
14. See EQUITY, 145. *Ritchie* v. *Bank of the United States*, v. 605.
15. See COVENANT, 7. *Kurtz* v. *Becker*, v. 671.

INFORMATION.
1. It must appear, upon a special verdict, that the offence was committed before the filing of the information. *Commonwealth* v. *Leap*, i. 1.
2. If the information, upon a by-law, state that the penalty accrued to the Commonwealth, when, by the charter, it accrued to the town, the judgment must be arrested. *Commonwealth* v. *Hooff*, i. 21.
3. An information may be amended by stating that the penalty accrued to the town instead of the Commonwealth. *Commonwealth* v. *Smith*, i. 22.
4. An information may be amended. *United States* v. *Evans*, i. 55; *United States* v. *Shuck*, i. 55.
5. In an information for selling spirituous liquors without license, it is not necessary to specify the particular kind of liquor, nor the person to whom sold. *United States* v. *Gordon*, i. 58.
6. All acts of selling, before prosecution, constitute but one offence. *Ibid.*
7. No information or indictment will lie upon a by-law of the Corporation of Alexandria. *Commonwealth* v. *Howard*, i. 61.
8. An information may be discontinued before the defendant's appearance. *Commonwealth* v. *Eakin*, i. 83.
9. See AMENDMENT, 44. *Gunton et al.* v. *Ingle et al.* iv. 438.
10. An information in the nature of a writ of *quo warranto*, may be sustained against a person usurping an office under a private corporation; but it is in the discretion of the Court to grant it or not. *Ibid.*
11. The information must show that the office usurped is a corporate office,

INFORMATION, (*continued.*)
and it must be a case in which the Court would have power to impose a fine; a case in which the public is concerned, or in which the authority of the United States is contemned or abused. *Ibid.*
12. Although an information has, in effect, become a civil proceeding, yet its form is criminal. *Ibid.*

INJUNCTION.
1. It is not necessary to give notice of the application for an injunction. *Love* v. *Fendall's Trustees*, i. 34.
2. The Court will grant an attachment for disobeying an injunction. *Munroe* v. *Harkness*, i. 157; *Munroe* v. *Bradley*, i. 158.
3. The Court, at an adjourned session, will not hear a motion to dissolve an injunction upon notice given after the first session of the term. *Burford* v. *Ringgold*, i. 253.
4. The absence of a witness at a trial at law is no ground of equity to obtain an injunction to stay proceedings at law upon a judgment. *Chapman et al.* v. *Scott*, i. 302.
5. Notice of motion, to dissolve an injunction, given on the first day of the term, is notice that the motion is to be made at the next succeeding term. *Ramsay* v. *Wilson*, i. 304.
6. An injunction, to stay execution upon a judgment at law for the purchase-money of land on the ground of the difficulty of obtaining title from the infant heirs of the vendor, cannot be supported if the purchaser neglected to pay the money and demand a title in the lifetime of the vendor, and if the heirs are not made parties to the suit. *Prout* v. *Gibson*, i. 389.
7. A general allegation of difficulty in procuring vouchers or of unavoidable delay in settling an administration account, is no ground of equity to injoin a judgment at law. *Wilson's Administrator* v. *Bastable*, i. 394.
8. The Court will not injoin what may or may not be a nuisance. *Ramsay* v. *Riddle et al.* i. 399.
9. An injunction to prevent a person from taking away a colored woman who has sued for her freedom, will not be granted upon the mere statement of the plaintiff's apprehension. *Negro Jenny* v. *Crase*, i. 443.
10. Notice to dissolve an injunction must be given ten days before the term; if given in term time, a term's notice is required. *Stodert* v. *Waters*, i. 483.
11. See EQUITY, 16. *Grundy* v. *Young*, ii. 114.
12. *Id.* 17. *Fairfax* v. *Hopkins*, ii. 134.
13. *Id.* 20. *Van Ness* v. *United States*, ii. 376.
14. See FREEDOM, 49. *Negro Rebecca* v. *Pumphrey*, ii. 514.
15. See GARNISHEE, 2. *Baker et al.* v. *Glover*, ii. 682.
16. Although a dedication of a lot to pious uses, may be too vague an appointment to be carried into effect, in a court of equity upon general principles, yet if it has been long occupied for those uses, with the knowledge and consent of the donor, his heirs may be perpetually injoined from disturbing the possession. *Kurtz et al.* v. *Beatty*, ii. 699.
17. See EQUITY, 25, 29, 32, 34. *Robinson* v. *Cathcart*, ii. 590.
18. *Id.* 41, 42, 43. *Kidwell Masterson*, iii. 52.
19. See BAIL, 72. *Foyles* v. *Law*, iii. 118.
20. See EQUITY, 48. *Oneale* v. *Caldwell*, iii. 312.
21. A tenant for ninety-nine years renewable forever, with leave to purchase the reversion at a stipulated price, may be restrained by injunction, from cutting and selling young and green wood, where the wood constitutes the principal value of the land. *Thruston* v. *Mustin*, iii. 335.
22. The Statute of Gloucester which gives the forfeiture of the thing wasted and treble damages, is in force in the county of Washington, D. C., and

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the defendant in equity is not bound to discover the waste unless the plaintiff, in his bill, expressly waives the forfeiture and penalty. *Ibid.*
23. See DAMAGES, 17. *Mason* v. *Muncaster*, iii. 403.
24. See EQUITY, 71. *Boone* v. *Small*, iii. 628.
25. *Id.* 110. *Ridgway* v. *Hays*, v. 23.
26. *Id.* 136, 137. *Roach* v. *Hulings*, v. 637.
27. *Id.* 90. *Oliver* v. *Decatur*, iv. 458.
28. See EMBEZZLEMENT, 21. *Cowing's case*, iv. 479.
29. See ATTACHMENT, 92. *Thornton's case*, iv. 500.
30. See EQUITY, 94. *Caldwell* v. *Walters*, iv. 577.

INQUEST.
1. Neither by the common law, nor by the Statute of Virginia, is the coroner bound to put in writing the effect of the evidence given upon an inquisition, unless the offence be found to be murder or manslaughter. *United States* v. *Faw*, i. 456.
2. This Court has jurisdiction to quash an inquisition taken under the charter of the Georgetown and Alexandria Turnpike Company. *Georgetown and Alexandria Turnpike Company* v. *Custis*, i. 585.
3. The inquisition need not be under the seals of the jurors. *Ibid.*
4. If the jurors are not disinterested the inquisition will be quashed. *Ibid.*
5. See CHESAPEAKE AND OHIO CANAL COMPANY, 10, 11, 13, 14, 15, 16. *Chesapeake and Ohio Canal Company* v. *Union Bank*, iv. 75.
6. *Id.* 8. *Chesapeake and Ohio Canal Company* v. *Binny*, iv. 68.
7. *Id.* 17. *Chesapeake and Ohio Canal Company* v. *Mason*, iv. 123.
8. See CORPORATION OF GEORGETOWN, 2. *Wright* v. *Corporation of Georgetown*, iv. 534.

INQUIRY.
1. Upon a writ of inquiry, in Virginia, the plaintiff's own oath is evidence of the amount of his claim. *Mandeville* v. *Washington*, i. 4.
2. Upon executing a writ of inquiry upon a judgment by default, the jury must find at least one mill in damages. *Frazer* v. *Lomax*, i. 328.

INSANITY.
1. A prisoner should not be found guilty, if, at the time of committing the act, he was in such a state of mental insanity, not produced by the immediate effects of intoxicating drink, as to have been unconscious of the moral turpitude of the act. *United States* v. *Michael Clarke*, ii. 158.
2. See BAIL, 90, 91, 92. *United States* v. *Richard Lawrence*, iv. 518.
3. In a criminal case, it is not necessary, on the part of the prosecution, to summon witnesses to the grand jury to prove the sanity of the accused, as every person is presumed to be of sound mind, until the contrary is proved. *Id.* 514.
4. The accused has no right to send witnesses to the grand jury to prove merely exculpatory matter. *Ibid.*

INSOLVENT.
1. A motion may be made against a sheriff in the name of the original plaintiff, although he has taken the insolvent oath. *Fendall* v. *Turner*, i. 35.
2. Upon proof of fraud, the Court will not permit the debtor to take the insolvent oath under the law of Virginia. *Camellos* v. *Reverez*, i. 62.
3. The plaintiff may maintain the action, although discharged as an insolvent debtor, under the law of Virginia, since the cause of action accrued. *Ridgway* v. *Pancost*, i. 88.
4. A plaintiff who has been discharged under the insolvent law of Maryland, of 1774, since the commencement of the action, is still competent to maintain it. *Ardrey* v. *Wadsworth*, i. 109.

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5. A discharge, under the Maryland Act of 1774, is not valid unless a copy of the certificate be affixed to the door of the county clerk's office. *Mountz* v. *Jones*, i. 212.
6. An insolvent who obtains his discharge by fraud, is not discharged "in due course of law." *Slacum* v. *Simms & Wise*, i. 242.
7. Bail will not be discharged by the production of the discharge of the principal as an insolvent debtor at the third term after the return of the *scire facias*. *Bowyer* v. *Hertz*, i. 251.
8. *Quære*, whether a defendant discharged under the insolvent law, after arrest upon the *capias ad respondendum*, and before the return, can be compelled to appear to that action. *Stover* v. *Densley*, i. 267.
9. An insolvent debtor will be discharged from arrest for costs accruing partly before, and partly after his discharge under the insolvent act. *Tenny* v. *Densley et al.* i. 314.
10. It is no bar to the plaintiff's recovery, that the maker of the note had, at the time it became payable, property enough to pay it, and that he and the plaintiff both resided in the same town, and that the plaintiff brought no suit against the maker. *Patton* v. *Violett*, i. 463.
11. The insolvency which will excuse the plaintiff for not bringing suit against the maker, must be such as, in the opinion of the jury, would render a suit fruitless. *Ibid.*
12. If the maker was solvent when the note became payable, and the defendant during such solvency requested the plaintiff to sue the maker, and he did not, the defendant is discharged from liability under the equity of the statute of Virginia. *Ibid.*
13. The discharge of the principal, under the insolvent act, before the return of the *ca. sa.* may be pleaded in bar to a *scire facias* against the bail. *Byrne* v. *Carpenter*, i. 481.
14. The ability of the maker of the note to pay part of his debts, is not evidence of his solvency. *Offutt* v. *Hall*, i. 504.
15. Upon the trial of allegations against an insolvent debtor, he may show that the party, filing the allegations, is not his creditor. *Mandeville* v. *Jamesson*, i. 509.
16. The discharge of a debtor under the Maryland insolvent law of January 3d, 1800, is a bar to an action for a debt contracted in Georgia, although the creditor always resided in South Carolina. *Wray* v. *Reilly*, i. 513.
17. In an action by an insolvent debtor for the use of his trustee, the defendant may set off the plaintiff's note to a third person, with a blank indorsement, which came to the defendant's hands before the plaintiff's insolvency; but he cannot set off the joint note of the plaintiff and another. *Banks* v. *King*, i. 543.
18. A plea that the maker of the note had, at the date of the writ, goods and chattels of a greater amount than the plaintiff's claim, is no answer to an averment of insolvency. *Janney* v. *Geiger et al.* i. 547.
19. Insolvency of the maker of a note in Virginia, dispenses with a suit against him; and also with demand and notice. *Offutt* v. *Hall*, i. 572.
20. See BAIL, 44. *Baugh* v. *Noland*, ii. 2.
21. A debtor, committed upon a *ca. sa.* issued from a court of the United States, cannot be discharged in Virginia, by two justices of the peace under the provisions of the law of that State. *Knox et al.* v. *Summers et al.* ii. 12.
22. In a suit by the trustee of an insolvent debtor, a creditor of the insolvent is not a competent witness. *Herbert* v. *Finley et al.* ii. 12.
23. If the defendant has been discharged under the insolvent law upon a *capias ad respondendum*, the marshal will be discharged from his amercement for not bringing him in at the return of the writ, upon the defend-

INSOLVENT, (*continued.*)
ant's entering his appearance in proper person. *Trundle* v. *Heise*, ii. 44.
24. See AFFIDAVIT, 5. *Way* v. *Selby*, ii. 44.
25. If a defendant, arrested upon a *capias ad respondendum*, be discharged under the insolvent act, before the return of the writ, and fail to appear, the marshal cannot be amerced. *Williams* v. *Craven*, ii. 60.
26. If the principal has been discharged under the insolvent law of Maryland, the bail will be discharged. *Burns* v. *Sim's bail*, ii. 75.
27. See BAIL, 53. *Bussard* v. *Warner's bail*, ii. 111.
28. The act of limitations runs in favor of an insolvent debtor, notwithstanding his discharge under the insolvent law. *Denny* v. *Henderson*, ii. 121.
29. The common printed form of the deed from an insolvent debtor to his trustee under the insolvent act, is sufficiently certain to convey to the trustee a title to the slaves. *Watson* v. *Hall*, ii. 154.
30. The Court will not, on motion, quash a *ca. sa.* issued by the clerk of this court upon a judgment of a justice of the peace, upon the ground that the defendant had applied for the benefit of the insolvent laws of Maryland, and had obtained an order and given bond for his appearance in St. Mary's county in Maryland, but had not yet obtained his final discharge. *Mattingly* v. *Smith*, ii. 158.
31. An attachment for rent not due, is superseded by the tenant's discharge under the insolvent act, District of Columbia. *Keene* v. *Jackson*, ii. 166.
32. See BAIL, 57. *Munroe* v. *Towers*, ii. 187.
33. *Id.* 58. *King* v. *Simms*, ii. 234.
34. A debtor, discharged under the insolvent act, cannot be arrested for a debt contracted before his discharge, although not payable till after his discharge. *James Anderson's case*, ii. 243.
35. See COSTS, 37, 38. *Emerson* v. *Beale*, ii. 349.
36. Upon the trial of an issue upon allegations filed by the creditors of an insolvent debtor to prevent his discharge, he must produce his books of account, if called for. *Henry Hadry's case*, ii. 364.
37. An insolvent debtor, arrested for a debt due before his discharge, can only be relieved by the Court before whom the process is returnable. *Frere* v. *Mudd*, ii. 407.
38. The allegations filed, to deprive a debtor of the benefit of the insolvent act, must be specific and certain. *John Connelly's case*, ii. 415.
39. The refusal of a judge to discharge the debtor, if the proceedings were irregular, is no bar to his discharge upon a subsequent application. All the orders and proceedings must be by the judge to whom the application was made. *Ibid.*
40. An insolvent debtor who has, within twelve months next before his application for the benefit of the insolvent act, assigned part of his property to give a preference to a creditor or surety, may withdraw his application and make a new application after the expiration of the year; and such withdrawing will be no bar to his relief upon his second application. *Thomas Crawford's case*, ii. 454.
41. The judge will not direct interrogatories to be filed, nor an issue to be tried upon vague allegations, nor unless the allegations charge the debtor with having conveyed, lessened, or disposed of part of his property, rights, or credits, with intent to defraud his creditors; or with having, at any one time within twelve months next preceding his application, lost, by gaming more than $300; or with having, within the said twelve months, assigned or conveyed a part of his property, rights, and credits, with intent to give a preference to a creditor or surety. A preference given more than a year before the application for relief, is no bar thereto. *Ibid.*

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42. If an insolvent debtor, upon allegations filed, be found guilty of having disposed of his property with intent to defraud his creditors, he will be ordered into close custody, and precluded from any benefit under the insolvent act. *Daniel Donoghue's case*, ii. 466.
43. Upon the trial of the issue on allegations filed against an insolvent debtor, it is incumbent upon the persons filing the allegations to show that they are creditors of the insolvent. After the jury is sworn, the Court will not permit the allegations to be amended by adding the name of another creditor. The judgment upon verdict against the debtor, is, "That he be precluded from any benefit under the act entitled," &c. *Walter Newton's case*, ii. 467.
44. The judgment-lien on the lands of an insolvent debtor, is not destroyed by the 5th section of the insolvent act, although there was no process of execution thereupon in the hands of the marshal at the time of the debtor's application for relief under the act. *Farmers' Bank of Alexandria* v. *Robbins*, ii. 471.
45. Upon trial of the issue upon allegations of fraud against an insolvent debtor, it must appear that the intended fraud was against creditors who were such at the time of the supposed fraudulent conveyance, and at the time of the trial. *Henry Knowles's case*, ii. 576.
46. A *bona fide* sale, by the debtor, of his property, or of any part of it, for the purpose of paying certain preferred creditors, to the exclusion of others, is not a fraud, of which he can be convicted, upon allegations filed under the insolvent act. *Ibid.*
47. The inserting, in the deed, a consideration less than the true consideration paid, is not, of itself, a fraud, if a fair, valuable, *bona fide* consideration was paid, or contracted to be paid. *Ibid.*
48. A deed void as to creditors because not accompanied and followed by possession, although technically fraudulent as to creditors, is not evidence of fraud, of which the debtor can be convicted upon allegations under the insolvent act, if there was a real *bona fide* consideration. *Ibid.*
49. Upon trial of an issue upon allegations under the insolvent act, the burden of proof is on the complaining creditors to show the fraudulent intent. *Ibid.*
50. A discharge from commitment on a *ca. sa.* under the insolvent act, is no discharge of the debt, but the plaintiff may resort to the lien of his judgment upon the lands of his debtor, although sold and conveyed away by him while the plaintiff was pursuing his remedy against the person of his debtor, and although the plaintiff had obtained judgment against him and his sureties on his prison-bounds bond. *Owens et al.* v. *Glover*, ii. 578.
51. See HABEAS CORPUS, 5. *Reardon's case*, ii. 639.
52. If the defendant, who is out upon a prison-bounds bond, given upon a *capias ad respondendum*, petitions for the benefit of the insolvent act, and upon allegations filed, is found guilty, in a summary proceeding before a judge who orders him into close custody, and "that he be precluded from any benefit under the act;" whereupon the debtor is committed to close custody, and afterwards escapes, the creditor at whose suit he was taken, cannot maintain an action upon the prison-bounds bond for that escape. *Keirll* v. *McIntire*, ii. 670.
53. *Quære* whether, if a petitioning debtor be convicted of fraud upon allegations in a summary proceeding before a judge out of Court, the judge has authority to order him into close custody? or whether the judge is merely to refuse to grant him the relief he seeks under the act? *Ibid.*
54. A debtor of the United States had been discharged from custody by order of the President of the United States under the act of the 3d of March, 1817, and had entered into an agreement with the marshal for the pay-

INSOLVENT, (*continued.*)
ment of his poundage fees by instalments, with a proviso, that if any instalment should not be paid when due, the marshal should take out a new *ca. sa.* for his fees; *Held*, that he could not be detained upon the new *ca. sa.* and the Court refused to order him to be committed. *United States* v. *J. K. Smith*, iii. 66.
55. See COSTS, 44. *Law* v. *Scott*, iii. 295.
56. See BAIL, 77. *Lee* v. *Gamble*, iii. 374.
57. The debtor may avail himself of the discharge of his person under the insolvent act against his creditor although he did not name him in his list of creditors filed with his petition. *Ibid.*
58. A discharge of the person of the debtor does not impair the obligation of the contract; it affects the remedy only. *Ibid.*
59. See BAIL, 78. *Harrison* v. *Gales*, iii. 376.
60. An insolvent debtor, found guilty upon allegations filed under the 7th section of the act, will not be ordered into close custody if he is out on prison-bounds bond. *McClean* v. *Plumsell*, iv. 86.
61. What allegations are sufficient to prevent a discharge under the insolvent act of D. C. *Eckle* v. *Fitzgerald*, iv. 90.
62. An insolvent debtor discharged under the insolvent act of the District of Columbia, cannot maintain a suit in his own name for a cause of action which accrued before his discharge; nor can his administrator. *Nevitt* v. *Maddox*, iv. 107.
63. The conviction of an insolvent debtor upon allegations filed upon a former petition when he was committed in execution in favor of another creditor who has since been paid, is not a bar to his subsequent application for the benefit of the act when committed under a subsequent execution. *Holtzman* v. *Plumsell*, iv. 184.
64. *Quære*, whether a non-resident creditor is bound by the discharge of his debtor under the insolvent law of the District of Columbia, who had been arrested at his suit, but who, at the time of the discharge was out upon a bail bond to the marshal? *Harrison et al.* v. *Boyd*, iv. 199.
65. The Act of Congress of May 6, 1822, "for the relief of certain insolvent debtors," is not confined to non-resident debtors. *Cook* v. *Fenton*, iv. 200.
66. A discharge under the insolvent act of the District of Columbia does not affect the rights of a non-resident creditor, unless the debtor be confined at his suit at the time of the discharge; and special bail will be required notwithstanding such discharge. *Hauptman* v. *Nelson*, iv. 341.
67. This Court will give to a discharge under the insolvent law of a state, the same effect here as it would in the state in which it was granted. *Channing* v. *Reiley*, iv. 528.
68. Debtors of the United States are not entitled to the benefit of the prison-bounds in the District of Columbia. *United States* v. *Gorman*, iv. 550.
69. Upon allegations filed in Court, within two years after the application of an insolvent debtor, for the benefit of the insolvent act, if the defendant do not appear to answer the same after having been duly summoned, the Court will take evidence *ex parte*, in support of the allegations, and if they find them to be true, will direct that the order of discharge before made, by a judge out of Court, be rescinded; and that the debtor be precluded from the benefit of the act. *Hayman* v. *Moxley*, v. 36.
70. A discharge under the insolvent act of the District of Columbia does not operate against a non-resident creditor, unless he be the creditor at whose instance the debtor is confined at the time of the discharge. *Brook* v. *Brown*, v. 486.
71. A non-resident does not, by bringing an action against his debtor in the District of Columbia, cease, in law to be "a creditor residing without the limits of the District of Columbia;" nor does he thereby waive the benefit

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given to non-resident creditors by the Act of Congress of the 6th of May, 1822. *Ibid.*
72. A debtor who is out on bail, is not in confinement at the instance of his creditor, within the meaning of the act of the 6th of May, 1822. Confinement within the meaning of that act is actual confinement in gaol, or in the prison-bounds at the time of the debtor's discharge. *Ibid.*
73. If the defendant has been discharged under the insolvent law of Maryland, the bail will be exonerated. *Claggett* v. *Ward*, v. 669.

INSTRUCTION.
1. Upon a prayer for instruction to the jury, the Court, in considering the question whether the jury can, from the evidence, infer the facts necessary to justify the instruction prayed, must decide in the same manner as they would upon a demurrer to evidence, and will consider all those acts proved which the jury could legally infer from the evidence; but upon the question whether the instruction prayed be justified by the facts stated in the prayer, the Court is bound to decide upon those principles which ought to govern them in deciding upon a special verdict. The ultimate facts, upon which the party relies, must be expressly and absolutely stated; the Court can infer nothing. *Bank of Alexandria* v. *Deneale*, ii. 488.
2. The Court will not instruct the jury upon a question of art depending upon nautical skill, and upon which the Court could not give an opinion without consulting persons skilled in nautical matters. *Howland* v. *Marine Ins. Co.* ii. 474.

INSURANCE.
1. Misrepresentation of the age and size of a vessel will not avoid a valued policy. *Straas* v. *Marine Ins. Co. of Alexandria*, i. 343.
2. If there be no warranty of neutrality the policy covers belligerent risks. *Ibid.* *Hodgson* v. *Marine Ins. Co.* i. 460.
3. The admissions of one of several underwriters on the same policy, cannot be given in evidence against another underwriter; nor the admissions of a committee of the company, not authorized by the articles of association to make admissions. *Lambert* v. *Smith*, i. 361.
4. Upon a valued policy, a misrepresentation as to size and age of the vessel, is no defence, although averred to be material as to the contract. *Hodgson* v. *Marine Ins. Co.* i. 460.
5. The plaintiff cannot give evidence that other underwriters upon the same policy have paid upon the same risk. *Lambert* v. *Smith*, i. 361.
6. The sentence and proceedings of a foreign Court of Vice-Admiralty, condemning the goods as enemy-property, are not conclusive evidence of that fact, in a suit upon the policy. *Ibid.*
7. It is no defence to an action on the policy, that the premium has been perpetually enjoined. *Hodgson* v. *Marine Ins. Co.* i. 460.
8. The members of an assurance association are bound by the act of the majority, unless there be some restriction in the articles of association. *Deane* v. *Tucker*, ii. 26.
9. Information received, by an agent of the assured, of the loss of the property before insurance effected, will not vacate the policy, unless that agent be the agent who obtained the insurance, or gave the information to the person who obtained it. *Patton* v. *Janney*, ii. 71.
10. If several actions against several underwriters upon the same policy, be submitted to the same jury at the same time, and the jury find verdicts against some of them, and wish to reconsider as to the others, those underwriters against whom verdicts are found, cannot be examined as witnesses for the others. *Ibid.*

INSURANCE, (*continued.*)

11. In ascertaining whether the loss upon a policy of marine insurance amounts to five per cent., a deduction must be made of one third of the cost of the repairs, as an allowance for the difference of value between the new and old materials. *Sanderson* v. *Marine Ins. Co.* ii. 218.
12. The Columbian Insurance Company of Alexandria, cannot, by a trustee, vote in the election of directors of the company, upon stock of the same company purchased by them, and held for their use in the name of the trustee. *United States* v. *Columbian Ins. Co. of Alexandria*, ii. 266.
13. The fact that insurance was made, cannot be proved without producing the policy or showing it to be lost. *Hutchinson et al.* v. *Peyton*, ii. 365.
14. If a policy of insurance be made for six months on a vessel, stated in the policy to be then bound on a voyage from Georgetown to Madeira and a market, between Cape Finisterre and Naples, with liberty, after the expiration of six months, to freight or trade for six months more, on a premium of five and a half per cent.; the risk for the second six months is upon time only; and the vessel, having performed the voyage described in the policy in the first six months, had a right to go to Brazil. *Stuart* v. *Columbian Ins. Co. of Alexandria*, ii. 442.
15. The owner of a vessel, who has contracted to sell her for a certain sum, and to make a title to the vendee upon the payment of the price, has an insurable interest to the full extent of the value of the vessel, and not merely to the extent of the price for which he has contracted to sell her. *Ibid.*
16. In an action on a valued policy on a cargo, the defendants will not be permitted to give evidence of its actual cost. The policy was on a voyage "at and from Rio Janeiro to Santos, and two other ports in South America, and at and from either of them to a port of discharge in the West Indies or Europe, or the United States," upon goods, "at and from Rio Janeiro, until they shall be safely landed at Santos," &c. &c., "valued at the sum insured," (namely, $3,500,) "on her cargo of salt, and on the proceeds, as interest may appear." These words do not justify an inference, on the part of the underwriters, that the goods were to be laden on board at Rio Janeiro. The cargo was lost between Rio Janeiro and Santos, and the plaintiffs recovered for the loss, although the cargo was laden at Cadiz. *Gardner* v. *Columbian Ins. Co. of Alexandria*, ii. 473.
17. The mere stranding of a ship on a bar, will not, of itself, justify an abandonment of the ship to the underwriters; but the master and crew are bound to use their best exertions to get her off. If the stranding were caused by want of skill on the part of the master, or by want of that degree of care and prudence which a skilful and prudent master of such a vessel would exercise in similar circumstances; or if, after she was stranded, he neglected to use all reasonable means to save her, the loss is not covered by the policy; but if the master and crew were competent, and all reasonable care was used to avoid the accident, and all reasonable exertions were used honestly and with good faith to prevent the wreck and destruction of the property, and it was, nevertheless, lost; then the loss was within the policy. *Howland* v. *Marine Ins. Co. of Alexandria*, ii. 474.
18. If the stranding was of such a character as to render it, in the exercise of good judgment, hopeless to get the vessel off, then the abandonment was justified, and the loss was within the policy. If the bar, upon which a vessel is stranded, is out of the due course of the voyage insured, and the deviation be voluntary, or produced by want of skill in the navigation of the ship, and by want of that degree of care and diligence on the part of the master and crew, which a prudent and skilful master and crew would use in like circumstances, the insurers are discharged. *Ibid.*

INSURANCE, (*continued.*)

19. The question of negligence of the master, is to be left to the jury under all the circumstances of the case, as they appear in evidence. *Ibid.*
20. Upon a valued policy, by which T. H. H., "on account of himself and J. J.," caused a ship to be insured by the defendants, in the sum of ten thousand dollars, T. H. H. may, alone, maintain an action in his own name, and recover judgment for the whole amount insured, although the declaration aver that the plaintiff and the said J. J. were interested in the ship to the amount insured. *Ibid.*
21. An offer to abandon the insured vessel, made as soon as the assured obtains the preliminary proofs of loss to be laid before the underwriters, is not too late. *Gardner et al.* v. *Columbian Ins. Co. of Alexandria*, ii. 550.
22. Upon a valued policy, evidence of over-valuation is not admissible, unless in support of an allegation of fraud. *Ibid.*
23. A person for whose use a vessel, worth three or four thousand dollars, was built, and who held the builder's bond of conveyance of the same upon payment of $1,260, and who had the entire possession and use of the vessel, had an insurable interest in the freight, and truly represented himself to the underwriters as the owner of the vessel, although the register was in the name of the builder, and that fact was not disclosed to the underwriters at the time of executing the policy. *Simmes* v. *Marine Ins. Co.* ii. 618.
24. Upon an open policy from St. Thomas to Havana, it was not necessary to disclose the fact that the vessel had sailed from Alexandria to Buenos Ayres, where a part of the cargo was discharged, and thence to St. Thomas. *Ibid.*
25. The owner of a vessel is entitled to reasonable freight only, unless he shows an express contract for a specific sum or price. The bill of lading is not conclusive evidence of such a contract. The bond of conveyance of the vessel by the builder to the plaintiff, was not conclusive evidence that the ownership, so far as the freight was concerned, was in the builder at the time of the insurance. *Ibid.*
26. It was no valid objection to the plaintiff's recovering freight from the Danish Island, St. Thomas, to the Spanish colony, Havana, that the vessel had been chartered at Buenos Ayres, then in a state of revolt against Spain, by Danish subjects resident at St. Thomas, for a voyage from Buenos Ayres to Havana, with leave to stop at St. Thomas, where she did stop and change her papers, and took a new bill of lading without unlading the cargo. *Ibid.*
27. See AVERAGE, 1. *Vowell* v. *Columbian Ins. Co.* iii. 83.
28. *Id.* 2. *Catlett* v. *Columbian Ins. Co.* iii. 192.
29. See DEVIATION. *West* v. *Columbian Ins. Co.* v. 309.

INTEREST.

1. The jury may, or may not, allow interest upon the balance of account. *Killingly* v. *Taylor*, i. 99.
2. In an action of covenant for rent, the landlord cannot recover interest. *Gill* v. *Patton*, i. 188.
3. *Quære*, whether interest can be recovered in an action for money had and received? *Gantt* v. *Jones*, i. 210.
4. In a judgment upon an attachment, interest cannot be added. *Power* v. *Semmes*, i. 247.
5. Rule for settling interest. *Dunlop* v. *Alexander*, i. 498.
6. After the plaintiff has received the principal debt, he cannot recover the interest in an action for principal and interest. *Potomac Co.* v. *Columbia Bank*, iii. 101.

INTEREST, (*continued.*)
7. See EQUITY, 83, 84. *Nicholson* v. *McGuire*, iv. 194.
8. If interest be payable annually, it may be added to principal and new note taken. *Oliver* v. *Decatur*, iv. 461.
9. See ADMINISTRATION, 40. *Union Bank* v. *Smith*, iv. 509.
10. When the mandamus is to credit a certain sum of money, it is sufficient obedience to the writ to credit that sum without interest. *United States* v. *Amos Kendall, Postmaster-General*, v. 385.
11. See EQUITY, 132, 133. *Markoe* v. *Coxe*, v. 537.
12. When the question of interest is expressly reserved at the time of the receipt of the principal, such a receipt is no bar to the recovery of the interest. *Burr* v. *Burch*, v. 506.

JOINT DEFENDANTS.
1. If one of three joint defendants pay the whole debt upon a joint execution for a debt contracted by them jointly, in a transaction in which they were partners, he cannot at law recover from the other partners their respective proportions of the whole debt which he has thus paid. *Riggs* v. *Stewart*, ii. 171.
2. If the writ be issued against two defendants, and one only be taken on the first writ, and the other be afterward taken on an *alias* or *pluries*, the cause against the defendant first taken will be consolidated with that against the other defendant, although there may have been an intermission of a term between the issuing of the first and second or other writ. *Smith* v. *Woodward & Yerby*, ii. 226.
3. If the declaration be against three jointly upon a joint assumpsit, and one of them only be taken, who pleads *non assumpsit* for himself alone, and a verdict be rendered for the plaintiff, the judgment will be arrested, unless the other joint defendants shall have appeared, or process shall have been issued and continued against them to the time of trial. *Edmondson* v. *Barrell*, ii. 228; *Nicholls* v. *Fearson*, ii. 526.
4. In an action against two defendants, if one be taken and issue joined, and plea waived and judgment confessed against him after the other had been taken, and before the cause is at issue against him, the judgment may be set aside for irregularity, and the two cases consolidated; and the issues made up and set for trial. *Hyer et al.* v. *Hyatt & Wilson*, ii. 633.
5. In a joint action against two defendants, if one only be taken on the first writ. and the other be taken on a subsequent writ, and the plaintiff not knowing that this other had been taken, alters his declaration by stating that he had not been taken, and proceeds to judgment against the defendant first taken, the Court will, at a subsequent term, permit the judgment to be set aside, and the declaration to be restored to its original form, and the cause to proceed as a joint action against both. *Newton* v. *Weaver & Burdick*, ii. 685.
6. See AMENDMENT, 31, 32. *Bell* v. *Davis*, iii. 4.
7. See EVIDENCE, 417, 418, 419, 420. *Patriotic Bank* v. *Coot*, iii. 169.
8. See DEPOSITION, 53. *Panill* v. *Eliason*, iii. 358.
9. If one only of two joint defendants be taken, who pleads *non assumpsit*, and issue be joined thereon, and the defendant taken offers himself ready for trial at the trial term, the plaintiff has not a right to continue the cause until the other defendant be taken, but must amend his declaration by suggesting or averring that the other is not yet taken, and upon such amendment, the defendant may have leave to plead *de novo*. *Bank of Columbia* v. *Hyatt et al.* iv. 38.
10. See EXECUTION, 46. *Ex parte Kennedy et al.* iv. 462.
11. The plaintiff, in a joint action against two defendants, may, of right, at the trial term, amend his declaration by suggesting the proceeding by two

JOINT DEFENDANTS, (*continued.*)
non est against the defendant who has not been taken. *Brooklyn White Lead Co.* v. *Pierce*, iv. 531.
12. In a joint action against two defendants, after judgment confessed by one of the defendants, it is too late for him to move to set aside the judgment because the *capias* was not renewed and regularly returned *non est* at every term until the trial term. The practice in such cases is unsettled. *Mc Candless* v. *Mc Cord*, iv. 533.
13. See EVIDENCE, 502. *United States* v. *Davidson*, iv. 576.
14. See EXECUTION, 48. *Devlin* v. *Gibbs & Coyle*, iv. 626.
15. If two be jointly indicted for robbery, and if one be acquitted and one convicted, the latter may have a new trial without the other, who may he examined as a witness upon the new trial. *United States* v. *Campbell & Turner*, iv. 658.
16. If three are charged with obtaining money by false pretences, and one only receive the money, the others are not guilty under the statute which punishes those only who obtain the fruit of the fraud. *Harriet Jones & Letty Clarke* v. *United States*, v. 647.
17. If three be jointly indicted for obtaining a check by false pretences, and it happen that the check is delivered to one of the three in the absence of the other two who afterward participate in the proceeds of the check, they are all equally guilty. *Ibid.*
18. See COVENANT, 7. *Kurtz* v. *Beeker*, v. 671.

JOINT THEFT.
See INDICTMENT, 57. *United States* v. *Holland*, iii. 254.

JUDGMENT.
1. The defendant cannot set off a joint judgment recovered by himself and wife, (for slander of the wife,) against the plaintiff. *Sutton* v. *Mandeville*, i. 2.
2. It is no cause for arresting the judgment, that the jury found the damages in pounds, when the damages in the declaration, are laid in dollars. *Butts* v. *Shreve et al.* i. 40.
3. It is no cause for arresting the judgment, that the debt is reduced by offsets below the original jurisdiction of the Court. *McKnight* v. *Ramsay*, i. 40.
4. Judgment will not be rendered on motion of one surety against another, unless the insolvency of the principal be fully proved. *White* v. *Perrin*, i. 50.
5. The want of the name of a prosecutor at the foot of an indictment for misdemeanor, is no ground for arresting the judgment. *United States* v. *Jamesson*, i. 62; *United States* v. *Singleton*, i. 237.
6. Judgment entered by mistake of the clerk, may be set aside at the next term, and the execution quashed. *United States* v. *McKnight*, i. 84.
7. A record of a former judgment between the same parties, upon the same cause of action, may be given in evidence upon *non assumpsit*. *Ridgway* v. *Ghequier*, i. 87.
8. Variance between the *capias* and the declaration, cannot be pleaded to set aside an office-judgment. *Hartshorne* v. *Ingle*, i. 91.
9. Judgment for sterling money. Irish sterling. *Bond* v. *Grace*, i. 96.
10. *Nil debet* is not a proper plea, here, to an action of debt upon a judgment of a State court. *Bastable* v. *Wilson*, i. 124.
11. The Court will permit a defendant to confess judgment for the whole amount of damages laid in the writ, although no declaration be filed. *McNeil* v. *Cannon*, i. 127.
12. If the clerk neglect to strike out a judgment, as ordered by the Court, it

JUDGMENT, (*continued.*)

may be done at the next term by order of the Court, on affidavit of the facts. *Ex parte Smith*, i. 127.

13. On a motion to set aside an office-judgment on an injunction bond, the Court will not suffer a defendant to plead that the obligee was dead at the time of the execution of the bond. *Porter* v. *Marsteller*, i. 129.
14. *Indebitatus assumpsit* lies upon the judgment of a justice of the peace. *Green* v. *Fry*, i. 137.
15. If execution issue before the end of the term in which the judgment was rendered, it may, on motion, be quashed, and the judgment rescinded. *Sharpless* v. *Robinson*, i. 147.
16. Upon a joint indictment the judgment must be several. *United States* v. *Ismenard*, i. 150.
17. A defendant arrested to appear at next term, cannot come in and confess judgment at this term, the writ being returnable at next term. *Askew* v. *Smith*, i. 159; *Haden* v. *Perry*, i. 285.
18. Upon a judgment, on motion, upon a replevin bond for rent, the plaintiff is entitled to the costs of the motion. *Cooke* v. *Myers*, i. 166.
19. After conviction of assault and battery, the Court will permit the defendant to give security to abide the judgment. *United States* v. *Greenwood*, i. 186.
20. Judgment, in replevin, for double rent. *Alexander* v. *Harris*, i. 243.
21. In an action upon a bond conditioned to pay money by instalments, if the verdict be rendered before all the instalments are payable, the jury must find how much is due upon each instalment, and when payable; as well those to become payable, as those already payable. *Davidson* v. *Brown*, i. 250.
22. An administrator, in Alexandria county, has a right, at law, to give a preference to a creditor by confessing a judgment; and a court of equity will not interfere by injunction. *Wilson* v. *Wilson*, i. 255.
23. When the writ of inquiry is set aside by the defendant, the plaintiff may have the cause continued at the defendant's costs. *McCulloch* v. *Debutts*, i. 285.
24. If the jury find for the plaintiff upon the issue of *plene administravit*, he shall have judgment *de bonis testatoris* for his whole debt. *Fairfax* v. *Fairfax*, i. 292.
25. When a statute merely alters the punishment of a common-law offence, the statutory punishment may be inflicted, although the indictment should not conclude *contra formam statuti*. *United States* v. *Norris* i. 411; *United States* v. *Dixson*, i. 414; *United States* v. *King*, i. 444.
26. A promise by an administrator to pay, in consideration of assets will support a judgment *de bonis intestatoris*. *Faxon* v. *Dyson's Administrator*, i. 441.
27. In an action upon an auctioneer's bond, for not paying over to A. B. money received for sales at auction, a rejoinder that it had not been established by judgment, that money was due to them by the auctioneer, is an issuable plea to set aside an office judgment. *Mayor and Commonalty of Alexandria* v. *Moore*, i. 440.
28. Upon a conviction of manslaughter at common law, the Court will give judgment of fine and imprisonment, under the Act of Congress of April 30th, 1790. *United States* v. *McLaughlin*, i. 444.
29. Upon counts, in the same declaration, charging the defendants, as executors, upon the promise of their testator; and upon their own promise as executors, in consideration of assets, the judgment, upon each count will be *de bonis testatoris*. *Dixon* v. *Ramsay*, i. 472.
30. In an action against an indorser of a promissory note, a record of a judgment on the same note between other parties, cannot be given in evidence, unless the note itself be produced, and the defendant's indorsement proved. *Welsh* v. *Lindo*, i. 497.

JUDGMENT, (*continued.*)

31. The only judgment which the Court can give in a case of bastardy, under the Maryland Act of 1781, c. 13, is that the defendant give security to indemnify the county. *United States* v. *Collins*, i. 592.
32. In Virginia, a judgment by confession is equal to a release of errors; and the Court will not grant a writ of error *coram vobis*, upon a suggestion of the death of the plaintiff, when the justice of the case does not seem to require it; nor will they quash a *fi. fa.* issued in favor of the plaintiff's administrator, upon suggestion of the death of the administrator after the award of execution. *Catlett* v. *Cooke*, ii. 9.
33. *Nil debet* is not a good plea to an action of debt upon a judgment of a court of one of the States; but the defendant may, by leave of the Court, withdraw it and plead *nul tiel record*, upon payment of the costs of the term, and a continuance of the cause if the plaintiff should desire it. *Short* v. *Wilkinson*, ii. 22.
34. See EXECUTION, 14. *Fitzhugh* v. *Blake*, ii. 37.
35. The defendant, upon *non assumpsit*, may give in evidence a former recovery of judgment against him upon an attachment in a court in Virginia, and such former judgment is a good bar to the action here. *Stone* v. *Stone*, ii. 119.
36. Judgment on motion and notice cannot be obtained upon a bond given to secure rent upon an attachment on a suggestion that the tenant is about to remove. *Simpson* v. *Legg*, ii. 132.
37. The right of the United States to summary judgment under the Act of Congress of March 3d, 1797, c. 74, § 3, does not extend to suits brought by the United States as indorsees of promissory notes. *United States* v. *Blacklock*, ii. 166.
38. A judgment against the principal debtor in a foreign attachment in Pennsylvania is not evidence in the District of Columbia, of a debt due by him to the plaintiff. *Ricketts et al.* v. *Henderson*, ii. 157.
39. The Act of Limitations of Virginia, of the 19th December, 1792, is no bar to a judgment, if execution has been issued and returned within ten years after the date of the judgment. *Irwin* v. *Henderson*, ii. 167.
40. See DEMURRER, 13. *Ibid.*
41. The Court, at a subsequent term, will set aside a judgment irregularly obtained, and quash the execution issued thereon. A judgment by default for want of a plea, before the expiration of the rule to plead, is irregular, and may be set aside, on motion, at a subsequent term. *Union Bank* v. *Crittenden*, ii. 238.
42. The Maryland Act of 1763, c. 23, § 4, does not dispense with the rule to plead, although the declaration be sent and served with the writ twenty days before the appearance term. *Ibid.*
43. There can be no judgment, in Washington county, D. C., against an executor or administrator for a debt of the testator or intestate, until the Court shall have ascertained the assets and assessed the sum for which the judgment shall be rendered against the executor or administrator, *de bonis propriis*. *Bank of Washington* v. *Peltz's Administrator*, ii. 241.
44. A judgment of the Circuit Court, D. C., cannot be superseded without two sureties. *Mandeville* v. *Love*, ii. 249.
45. See DEMURRER, 19. *Bank of the United States* v. *Smith*, ii. 319.
46. See BILLS AND NOTES, 116. *Ibid.*
47. See BOOKS, 3. *Maye* v. *Carbery*, ii. 336.
48. *Id. Bank of the United States* v. *Kurtz*, ii. 342.
49. A judgment upon a special verdict, or upon a verdict subject to the opinion of the Court upon a case stated, does not relate back to the date of the verdict, so as to overreach an intermediate verdict against the same defendant in another cause. *Bank of the Metropolis* v. *Walker*, ii. 361.

JUDGMENT, (*continued.*)

50. Upon motion of the special bail, at the return of the *scire facias*, the Court will set aside the original judgment against the principal, for irregularity, and will quash the *scire facias* against the bail. *Ault* v. *Elliot*, ii. 372.
51. A supersedeas-judgment must recite the original judgment correctly. *Holmes* v. *Bussard*, ii. 401; *McSherry* v. *Queen*, ii. 406.
52. See COSTS, 40. *Blagrove* v. *Ringgold*, ii. 407.
53. A judgment for the defendant in replevin without a declaration, is irregular, and will, on motion, be set aside, even at a subsequent term. *Ringgold* v. *Elliot*, ii. 462.
54. See INSOLVENT, 43. *Walter Newton's case*, ii. 467.
55. *Id.* 44. *Farmers Bank* v. *Robbins*, ii. 471.
56. The United States are entitled to judgment at the return term, upon revenue-bonds, although by the general rule and practice of the Court, the day after the last day of the term is the appearance day to all writs returnable to that term; and the Court will, upon motion, rule the marshal to return the writ on some day during the term. *United States* v. *May et al.* ii. 507.
57. If the issue of "never executor" be found against the defendant the judgment will be *de bonis testatoris si, &c., et si non, de bonis propriis.* *Peters* v. *Breckenridge*, ii. 518.
58. A justice of the peace may render judgment by default against a woman who does not appear at the time and place named in the warrant. *Quære.* *Oneil* v. *Hogan*, ii. 524.
59. See ATTACHMENT, 59, 60, 61. *Jones* v. *Kemper*, ii. 535.
60. The judgments which are made void by the Virginia statute against gaming, are judgments voluntarily confessed by way of security for a gaming debt; not judgments rendered *in invitum.* *Welford* v. *Gilliam*, ii. 556.
61. See INSOLVENT, 50. *Owen* v. *Glover*, ii. 578.
62. See EQUITY, 35. *Farmers and Mechanic's Bank* v. *Melvin*, ii. 614.
63. See INSOLVENT, 52. *Keirl* v. *McIntire*, ii. 670.
64. See ATTACHMENT, 74. *Homans* v. *Coombe*, ii. 681.
65. See GARNISHEE, 1. *Ibid.*
66. *Id.* 2. *Baker et al.* v. *Glover*, ii. 682.
67. See JOINT DEFENDANTS, 5. *Newton* v. *Weaver*, ii. 685.
68. See WARRANT. *Boothe* v. *Corporation of Georgetown*, ii. 356.
69. See ESTOPPEL, 3. *Allen* v. *Magruder*, iii. 6.
70. See EQUITY, 42, 43. *Kidwell* v. *Masterson*, iii. 52.
71. See EXECUTION, 33. *Veitch* v. *Farmers Bank*, iii. 81.
72. See BILLS AND NOTES, 171. *King* v. *Thompson*, iii. 146.
73. See BAIL, 73. *McDaniel* v. *Riggs*, iii. 167.
74. See DAMAGES, 14, 15. *Wood* v. *May*, iii. 172.
75. See AMENDMENT, 34. *Bank of the United States* v. *McKenney*, iii. 173.
76. A judgment by default, and writ of inquiry, in the county of Washington may be set aside at the next term, upon affidavit of merits, payment of costs, and pleading to issue on the merits *instanter* and offering ready for trial. *Reiling* v. *Bolier*, iii. 212.
77. A judgment against the bank in a suit upon the teller's bond, is not a bar to an action for money had and received by him for the use of the bank. *Bonk of the United States* v. *Johnson*, iii. 228.
78. See BILLS AND NOTES, 174. *Garey* v. *Union Bank*, iii. 233.
79. The justice of the peace had rendered judgment in favor of "Rawlings & Son." The Court, upon appeal, reversed the judgment because the party plaintiff was not named in the proceedings. *Rhea* v. *Rawlings*, iii. 256.
80. If there be a general verdict for the plaintiff, and one of the counts be

JUDGMENT, (*continued.*)
bad, the judgment must be arrested; but if there be one good count, a *venire facias de novo* may be awarded. *Mandeville* v. *Cookenderfer*, iii. 257.
81. See AMENDMENT, 36. *Brown* v. *Gilles*, iii. 363.
82. See DAMAGES 17. *Mason* v. *Muncaster*, iii. 403.
83. See EVIDENCE, 411. *Hade* v. *Brotherton*, iii. 594.
84. See AGENT, 18. *Bank of Washington* v. *Bank of the United States*, iv. 86.
85. In a criminal case, if the defendant has forfeited his recognizance, the Court will not hear a motion in arrest of judgment until the defendant appear in proper person. *United States* v. *Askins*, iv. 98.
86. A transcript of the judgment and proceedings of a justice of the peace in Pennsylvania, entered of record in a County Court, is not a judgment of that court. *Allen* v. *Arguelles*, iv. 170.
87. The want of the name of a prosecutor written on the indictment, is not a good ground to arrest the judgment. *United States* v. *Turley*, iv. 334.
88. See ADMINISTRATION, 37. *Bettinger* v. *Ridgway*, iv. 340.
89. The confession of judgment, in order to operate as a supersedeas, must be made in the very words of the statute of Maryland, 1791, c. 67. And an execution issued upon a judgment confessed in any other form, by way of supersedeas, is null and void; and the justice who issued the execution, the constable who served it, and the party who ordered it, were trespassers, and liable to the party injured thereby, for his damages. *Plant* v. *Holtzman*, iv. 441.
90. See EXECUTION, 46. *Ex parte Kennedy et al.* iv. 462.
91. It is no good ground of arrest of judgment in a criminal case, that the marshal did not summon forty-eight jurors, and that the clerk did not draw twenty-three grand jurors by ballot, according to the Maryland Act of 1797, c. 87, which was only applicable to the County Courts; nor that one of the petit-jurors had been summoned, and had served on the jury of the preceding term. *United States* v. *Peaco et al.* iv. 601.
92. See EXECUTION, 48. *Devlin* v. *Gibbs & Coyle*, iv. 626.
93. The cause of action to recover back money paid upon a judgment reversed for error, arises upon the reversal, although the appellate court at the time of the reversal, order a *venire facias de novo* to be issued by the inferior court, and the cause be still there depending; and the limitation of the statute begins to run from the time of such reversal. *Bank of Washington* v. *Neale*, iv. 627.
94. See EXECUTION, 49. *Chesapeake and Ohio Canal Co.* v. *Barcroft*, iv. 659.
95. A judgment binds lands subsequently acquired. *Rachel Jackson* v. *Bank of the United States et al.* v. 1.
96. If the judgment be revived between the original parties, it is not necessary to issue a *scire facias* against the terre-tenants who purchased more than a year after the judgment and before its revival; nor is it necessary during the life time of the original defendant to issue any *scire facias* to his vendees who purchased after the judgment; nor to bring in all the terre-tenants; nor is it material that the debtor was solvent for a long time after the judgment; for purchasers are bound to take notice of judgments on record. *Ibid.*
97. It is no objection that the judgment is of twelve years standing, if it has been revived within the twelve years, and twelve years have not elapsed since the revival. *Ibid.*
98. It seems, that a purchaser of lands bound by a judgment against the vendor, may move to quash the execution upon its return; or may have an *audita querela*. *Ibid.*
99. See ASSAULT AND BATTERY, 22. *United States* v. *Herbert*, v. 87.

JUDGMENT, (*continued.*)

100. See AMENDMENT, 45. *United States* v. *Fearson*, v. 95.
101. After a sentence of imprisonment has been in part executed, the Court will not rescind it and grant a new trial, although moved for at the same term; it being doubtful whether the Court has a power to do so. *United States* v. *James Hastings*, v. 115.
102. A judgment of a justice of the peace, being in part for a matter not within his jurisdiction, is void *in toto*. *Foy* v. *Talburt*, v. 124.
103. If, after judgment, an entry be made in the clerk's docket, intimating that the judgment is for the use of a third person, the Court will not interpose to order it to be stricken out, after the term in which the judgment was rendered. *Bradley* v. *Eliot*, v. 293.
104. See EXECUTION, 51. *Bowen* v. *Howard*, v. 308.
105. If the verdict be general, and one of the counts be bad, the judgment must be arrested; and the Court will not, after the verdict has been recorded, order it to be amended by applying it to the good count only, unless the evidence given was applicable to that count only. *Fenwick* v. *Grimes*, v. 439.
106. A judgment by default at the imparlance term at Washington, is regular, the rule to plead having expired the preceding vacation. *Linthicum* v. *Remington*, v. 546.
107. See EQUITY, 137. *Roach* v. *Hulings*, v. 637.
108. The judgment for the defendant in replevin, will, in all cases, be for a return. *Hemstead* v. *Colburn*, v. 655.

JURISDICTION.

1. The jurisdiction of the United States over the District of Columbia, vested in them on the first Monday of December, 1800. *United States* v. *Hammond*, i. 15.
2. This Court has jurisdiction in trespass, although the damages are less than twenty dollars. *Goddard* v. *Davis*, i. 33.
3. This Court has not jurisdiction of an attachment for a less sum than twenty dollars, in Alexandria. *Rutter* v. *Merchant*, i. 36.
4. This Court has jurisdiction, although the debt be reduced, by off-sets, to less than twenty dollars. *McKnight* v. *Ramsay*, i. 40.
5. A plea to the jurisdiction is a good plea in bar after an office-judgment. *Smith* v. *McCleod*, i. 43.
6. This Court has jurisdiction of prosecutions for gaming under the law of Virginia; although that law directs the prosecution to be had before a justice of the peace. *United States* v. *Heinegan*, i. 50.
7. An offence against the commonwealth of Virginia, committed in Alexandria before the first Monday of December, 1800, may be prosecuted in this Court as an offence against the United States. *Ibid.*
8. An inhabitant of Alexandria county may be arrested in Washington county without a previous return of *non est* in Alexandria county. *Thompson* v. *Lacy*, i. 79.
9. Two separate causes of action, amounting together to more than twenty dollars, if joined in one declaration, will give this Court jurisdiction, although neither amounts to twenty dollars. *Ridgway* v. *Pancost*, i. 88.
10. This Court has no jurisdiction to try a slave for larceny, but will quash the indictment, and send him to a justice of the peace to be tried. By consent of parties, the Court will try the issue, whether slave, or not. *United States* v. *Negro Jack*, i. 44; *United States* v. *Louder*, i. 103.
11. If the verdict in assumpsit, be for less than twenty dollars, a nonsuit must be entered. *Currey* v. *Fletcher*, i. 113.
12. This Court has jurisdiction, in Alexandria, to require the father of a bastard child, to give security for its support. *Ross* v. *Hingston*, i. 140.

JURISDICTION, (*continued.*)

13. If the verdict be reduced below twenty dollars, by accounts in bar, there must be judgment of *non pros.* *Beale* v. *Voss*, i. 179; *McLaughlin* v. *Stelle*, i. 483.
14. The mayor of Washington cannot exercise jurisdiction in a case in which he is party. *Barney* v. *Corporation of Washington*, i. 248.
15. In Alexandria, this Court has jurisdiction in an action of debt upon a promissory note for two hundred and fourteen dollars, although the amount due upon it should be reduced by payments indorsed upon it before suit brought, to eight dollars and ninety-four cents. *Hayes* v. *Bell et al.* i. 440.
16. The Court in Alexandria has jurisdiction to discharge an apprentice for cruelty of the master, and to bind him out to another master. *Cannon* v. *Davis*, i. 457.
17. In an action of debt upon a sealed note, if the verdict be reduced below twenty dollars by payments proved at the trial, judgment must be as in cases of *non pros.* *Smith* v. *Queen*, i. 483.
18. If a mortal stroke be given in Alexandria, and the death happen in Maryland, this Court has not jurisdiction of the offence, as a homicide, but has jurisdiction of the assault and battery. *United States* v. *Bladen*, i. 548.
19. The Court has jurisdiction to quash an inquisition taken under the charter of the Georgetown and Alexandria Turnpike Company. *Georgetown and Alexandria Turnpike Co.* v. *Custis*, i. 585.
20. This Court has jurisdiction in cases of bastardy under the Maryland Act of 1781, c. 13, and may order the defendant to give security to indemnify the county. *United States* v. *Collins*, i. 592.
21. A justice of the peace only can make the order for the payment of thirty pounds a year, by the father of the bastard, under the Maryland Act of 1796, c. 34. *Ibid.*
22. See INSOLVENT, 21. *Knox* v. *Summers*, ii. 12.
23. See FERRIES, 1. *Berry's case*, ii. 13.
24. *Id.* 2. *Young's case*, ii. 453.
25. A creditor may give a credit upon his account, so as to give jurisdiction to a justice of the peace. *Porter* v. *Rapine*, ii. 47.
26. A person who steals goods in Maryland, and brings them here, is guilty of larceny here. *United States* v. *Haukey*, ii. 65.
27. See BY-LAW, 11. *Joseph Dean's case*, ii. 125.
28. Upon an attachment under the Virginia statute of December, 26, 1792, § 6, the Court may, in its discretion, suffer the principal debtor to appear without bail, and without discharging the attached effects, at the first term after the return of the attachment, and to plead to the jurisdiction. *Locke* v. *Cannon*, ii. 186.
29. If the verdict be below the jurisdiction of this Court, the jury is not entitled to the fee of 12 shillings under the Maryland law. *Skinner* v. *McCaffrey*, ii. 193.
30. A justice of the peace has no jurisdiction of an action against an administrator. *Ritchie* v. *Stone*, ii. 258.
31. No appeal lies from the judgment of a justice of the peace, imposing a fine for profane swearing in his presence. *Howard* v. *United States*, ii. 259.
32. The Court has authority to suspend an attorney of the Court from practice for a limited time, or to expel him entirely; and may, for that purpose, inquire in a summary manner, as to any charges of malpractice alleged against him. *Levi S. Burr's case*, ii. 379.
33. In cases of bastardy, the Court in Alexandria has no jurisdiction, unless upon complaint of the overseers of the poor of the county. *United States* v. *David Dick, jun.* ii. 409.
34. If a warrant contain, on its face, a cause of arrest within the jurisdiction of the magistrate, and purport to have been issued within the local jurisdic-

JURISDICTION, (*continued.*)
tion of the magistrate, and is, in other respects, formal, the officer is bound to execute it; and resistance is unlawful, although, in fact, the offence was not committed within the local jurisdiction of the magistrate. *United States* v. *Thompson*, ii. 409.
35. If a man steal goods in North Carolina, and bring them here, he is guilty of larceny here. *United States* v. *Mason*, ii. 410.
36. A dead man cannot be the owner of goods. It is not sufficient to state them to be goods of one A. B., deceased. *Ibid.*
37. This Court has no jurisdiction of assault and battery by a slave on a white man; and will order him to be taken before a justice of the peace, to be dealt with according to law. *United States* v. *Negro Ellick*, ii. 412.
38. A creditor has no right to give a false credit upon a note so as to reduce it to the jurisdiction of a justice of the peace. *Cazenove* v. *Darrell et al.* ii. 444.
39. All the orders and proceedings in a case under the insolvent act, must be by the judge to whom the application was made. *John Connelly's case*, ii. 415.
40. A justice of the peace, under the Act of Congress for extending the jurisdiction of justices of the peace, has not jurisdiction of suits against administrators. *Adams* v. *Kincaid*, ii. 422.
41. If a creditor gives a credit upon his account, so as to bring it within the jurisdiction of a justice of the peace, and if the debtor does not object to the credit before the justice, his assent to the credit will be presumed. *Maddox* v. *Stewart*, ii. 523.
42. No appeal lies from the judgment of a justice of the peace rendered upon the verdict of a jury. *Ibid.*
43. A creditor cannot, without the consent of the debtor, relinquish part of his claim so as to bring it within the jurisdiction of a justice of the peace. *Burton* v. *Varnum*, ii. 524.
44. If an entire debt of $250 be settled by the debtor's giving his several notes for $50 each, payable at different times; each note is within the jurisdiction of a justice of the peace; and if all the notes have become payable, he may issue his five separate warrants, and render judgment in each case against the debtor. *Moore* v. *Hough*, ii. 561.
45. This Court, as a Court of Equity, has no jurisdiction in the cause, unless some party, against whom an effectual decree can be made, be found within the district. *Vasse* v. *Comegyss*, ii. 564.
46. Officers of the United States holding public money as money of the United States, are only accountable to the United States, and are not liable at the suit of an individual, on account of having such public money in their hands. *Quære*, where is the treasury of the United States? *Ibid.*
47. A justice of the peace has jurisdiction in a case of a small debt, and his judgment is not absolutely void; and the officer who serves a *ca. sa.* upon that judgment is not a trespasser; although the plaintiff's proper remedy was upon the defendant's administration bond, the penalty of which was $500, and so beyond the jurisdiction of the justice. *Mickum* v. *Paul*, ii. 568.
48. See ATTACHMENT, 70. *Dix* v. *Nicholls*, ii. 581.
49. See EXECUTOR, 15. *Nicholls* v. *Hodge*, ii. 582.
50. See ATTACHMENT, 72. *Miller* v. *Hooe et al.* ii. 622.
51. A debt of $50, upon which interest is due, cannot be recovered before a justice of the peace. *Milburne* v. *Burton*, ii. 639.
52. See HABEAS CORPUS, 6. *Reardon's case*, ii. 639.
53. This Court has not jurisdiction of riot and assault and battery by slaves in Alexandria County, D. C. *United States* v. *Negro Calvin et al.* ii. 640.
54. If the justice of the peace had not jurisdiction of the cause, his judgment may be reversed upon appeal, although the cause was tried before him by a jury. *Cross* v. *Blanford*, ii. 677.

JURISDICTION, (*continued.*)
55. See DESCENTS. *Tolmie* v. *Thompson*, iii. 123.
56. The Orphans' Court has no jurisdiction of a complaint against the executors of M. B., administratrix of R. B., by the "representatives of R. B." (not naming them,) to compel a distribution of the estate of R. B., there being an administrator *de bonis non* of R. B., who alone had authority to call on the executors of the original administrator of R. B., for the assets remaining in their hands. *Smith* v. *Billing*, iii. 355.
57. See FALSE PRETENCES, 2, 3, 20, 31, 32. *United States* v. *Watkins*, iii. 441.
58. An indictment for bigamy must be tried in the county in which the second marriage was had. *United States* v. *Jernegan*, iv. 1.
59. See DETINUE, 2, 3. *Maynadier* v. *Duff*, iv. 4.
60. See CERTIORARI, 3. *Kennedy* v. *Gorman*, iv. 347.
61. See APPEAL, 27, 28. *Corporation of Washington* v. *Eaton*, iv. 352.
62. The Circuit Court of the District of Columbia, has power to hold special sessions for the trial of criminal causes; and has jurisdiction at a special session, to try offences committed between the time of ordering and the time of holding such session; and its jurisdiction is not limited to such causes of federal jurisdiction as may be tried in a Circuit Court of the United States sitting in a State. *United States* v. *Christiana Williams*, iv. 372.
63. See BY-LAW, 36–40. *Ex parte Julia Reed*, iv. 582.
64. This Court does not derive any part of its jurisdiction from the laws of Maryland which give jurisdiction to their courts. The jurisdiction is given to this Court by Act of Congress. *United States* v. *Tarlton*, iv. 682.
65. See BY-LAW, 43. *Hall* v. *Corporation of Washington*, iv. 722.
66. See EQUITY, 132. *White* v. *Clarke*, v. 102.
67. See ADMINISTRATION, 43. *Foy* v. *Talburt*, v. 124.
68. The Circuit Court of the District of Columbia has authority to issue a *mandamus* to an officer of the United States, commanding him to perform a ministerial duty required by an Act of Congress, in which the right of an individual is concerned, if that right be clear, and he had no other legal specific remedy. *United States, at the relation of Stokes et al.* v. *Amos Kendall*, v. 163.
69. A justice of the peace may have jurisdiction incidentally, of a matter of which he would not if it were the principal cause of action; therefore he may have jurisdiction in an action of debt upon a bond in the penalty of $50, conditioned that if a certain bay mare should be proved not to be the property of J. B., the bond should be in full force, otherwise void; and thus collaterally try the title to the mare. *Moore* v. *Waters*, v. 283.
70. See CHANCELLOR OF MARYLAND, 1. *Bank of the United States* v. *Van Ness*, v. 294.
71. See ADMINISTRATION, 44, 45. *Atkinson* v. *Robbins*, v. 312.
72. The justices of the peace have jurisdiction, in cases of small debts against women. *Negro Harriet Johnson* v. *Corporation of Washington*, v. 434.
73. See ATTACHMENT, 101. *Hard* v. *Stone*, v. 503.
74. See CERTIORARI, 7. *Homans* v. *Moore*, v. 505.
75. A justice of the peace has jurisdiction against executors and administrators under the Act of Congress of March 1, 1823. *Ennis* v. *Holmead*, v. 509.
76. See GUARDIAN, 26, 27, 28. *United States, use of Gody* v. *Bender*, v. 620.
77. See APPEAL, 30. *Newton* v. *Carberry*, v. 626.

JURY.
1. The Court will not, in a criminal case, permit counsel to argue a point of law to the jury, which has been decided by the Court in a previous cause. *Commonwealth* v. *Zimmerman*, i. 47; *United States* v. *Cottom*, i. 55.
2. When a jury returns into court, to re-examine a witness, neither party will

JURY, (*continued.*)
be permitted to ask any question of the witness, nor to make any motion to the court in the presence of the jury. *Ibid.*
3. Peremptory challenge is allowed only in capital cases, in Alexandria. *United States* v. *Carrigo*, i. 49.
4. When the penalty is fixed by law, the fine is not to be assessed by the jury. *United States* v. *Heinegan*, i. 50.
5. The Court is not bound, at the request of either party, to instruct the jury, after they have retired, unless the jury themselves request instructions. *Forrest* v. *Hanson*, i. 63.
6. Clerks in the public offices will not be compelled to serve as jurors. *General Rule*, i. 130; *General Rule*, i. 147.
7. A juror in Washington County, D. C., cannot be permitted to affirm instead of making the usual oath, unless he be one of those people who hold it unlawful to take an oath on any occasion. *Wilson Bryan's case*, i. 51; *Samuel McIntire's case*, i. 157.
8. A juror may be sworn with uplifted hand, instead of touching the evangels. *Ibid.*
9. Jurors, escaping from their room, may be fined for their contempt. *Offutt* v. *Parrott*, i. 154.
10. Upon an indictment at common law for a riot in Alexandria county, the term of imprisonment is not to be assessed by the jury. *United States* v. *McFarlane et al.* i. 163.
11. After the jury has returned into court to give their verdict, the Court will not permit a witness to be examined, who has come into court since the jury retired. *Riley* v. *Cooper*, i. 166.
12. Upon a conviction for disturbing a religious congregation in Alexandria, the punishment is fine and imprisonment, to be assessed by the jury. *United States* v. *Aubrey*, i. 185.
13. An alien cannot be a petit juror. *United States* v. *Johnston*, i. 237.
14. The qualifications of jurors in Alexandria county, are the same as in the county courts of Virginia. *Young* v. *Marine Ins. Co.* i. 238.
15. Affidavits by jurymen will not be received to show miscalculation or mistake, or misconduct of the jurors, in giving their verdict. *Ladd* v. *Wilson*, i. 305.
16. In all cases of felony, in Alexandria county, the prisoner is entitled to a peremptory challenge. *United States* v. *Browning*, i. 330.
17. The Court will not ask a juror before he is sworn, whether he has formed and delivered an opinion in the case, but will leave the party to his challenge for favor. *United States* v. *Johnson*, i. 371.
18. Upon an indictment for burglary, the jury may find the prisoner guilty of larceny only. *United States* v. *Dixon*, i. 414.
19. In an action against an insurance company, a nephew of a stockholder is not a competent juror. *Young* v. *Marine Ins. Co.* i. 452.
20. It is not a principal cause of challenge, that the juror has had conversations with some of the parties; but it is evidence for the consideration of the triers upon a challenge for favor. *Ibid.*
21. The Court will not permit the jurors to be polled, unless some reason be assigned therefor. *Dunlop* v. *Munroe*, i. 536.
22. Peremptory challenge is not allowed in cases of larceny in Washington county. *United States* v. *McPherson*, i. 517.
23. The Court will not instruct the jury upon a point not material to the issue. *Harper* v. *Smith*, i. 495.
24. Citizens of Alexandria are not competent jurors in an action of debt for the penalty of a by-law of the corporation; but are competent witnesses. *Common Council of Alexandria* v. *Brockett*, i. 505.
25. The two jurors first sworn in a cause, are the proper triers of a challenge for favor. *Joice* v. *Alexander*, i. 528.

JURY, (*continued.*)
26. The Court will not permit counsel to argue to the triers upon a challenge for favor. *Ibid.*
27. The challenged juror cannot be examined as a witness to the triers. *Ibid.*
28. Information, given by one juror to the others, after they have retired, is not sufficient ground for a new trial, if the verdict has done substantial justice between the parties. *Cherry* v. *Sweeny*, i. 530.
29. The Court will not willingly hear affidavits of jurors as to their proceedings in the jury-room. *Ibid.*
30. Misbehavior of jurors is not a ground for new trial, if it has not affected their verdict. *Henry* v. *Picketts*, i. 545.
31. If a juror in a civil cause be suddenly taken ill, the jury may be discharged, and the trial postponed till the next term. *Young* v. *Marine Ins. Co.* i. 566.
32. Alienage is not a cause of challenge of a juror. A challenge for favor is to be tried by the two first jurors sworn in the cause. *Mima Queen* v. *Hepburn*, ii. 3.
33. If the jury give only one cent damages, believing that it would carry costs when it would not, they will not be permitted, after the verdict is taken and they have been discharged from the cause, to go out again to alter it. *Snowden* v. *McGuire*, ii. 6.
34. Under the Maryland Act of 1798, ch. 1, c. 8, § 15, the court, and not the ury, is to ascertain whether the defendants paid away all the assets before notice of the plaintiff's claim. *Hellen* v. *Beatty*, ii. 29.
35. Peremptory challenge is allowed upon an indictment for manslaughter in Alexandria, D. C. *United States* v. *Craig*, ii. 36.
36. A grand juror may be required to testify as to the evidence given before the grand jury. *United States* v. *Porter*, ii. 60.
37. Grand jurors may testify as to the confessions made by the prisoner before them upon oath when under examination as a witness against another person. *United States* v. *Negro Charles*, ii. 76.
38. The Court will not receive evidence of the declarations of jurors that they assessed the damages by taking the average of the sums put down by each juror respectively. *Holmead* v. *Corcoran*, ii. 119.
39. If the jury take out the coroner's inquest and depositions, and find the prisoner guilty of murder, a new trial will be granted. *United States* v. *Michael Clarke*, ii. 152.
40. If the verdict be below the jurisdiction of the Court, the jury is not entitled to the fee of twelve shillings. *Skinner* v. *McCaffrey*, ii. 193.
41. A juror who has a cause at issue which he expects will be tried at the same term, will be discharged; and if not discharged may be challenged. *Darius Clagett's case*, ii. 247.
42. See FREEDOM, 42. *Matilda* v. *Mason*, ii. 343.
43. After the jury is sworn in a capital case, and the cause has been opened, the Court cannot, without the prisoner's consent, discharge a juror at his own request. *United States* v. *Negro Randall*, ii. 412.
44. The Court, having doubts concerning their jurisdiction, in appeal from a justice of the peace in a cause tried before him by a jury, requested the gentlemen of the bar, if so disposed, to argue the question; and, for that purpose, continued all the cases of appeal, over twenty dollars value, to the next term. *Sherburne* v. *Semmes*, ii. 446.
45. A foreigner in Virginia is entitled to a jury *de medietate linguæ*. *United States* v. *Carnot*, ii. 469.
46. The Court will not instruct the jury upon a question of art depending upon nautical skill. *Howland* v. *Marine Ins. Co.* ii. 474.
47. The question of negligence of a master of a vessel in conducting the voyage, is to be left to the jury under all the circumstances of the case as they appear in evidence. *Ibid.*

JURY, (*continued.*)
48. It is a good cause of challenge, in a capital case, that the juror is a Quaker, and has conscientious scruples of taking away human life for any offence. *United States* v. *Betsey Ware*, ii. 477.
49. An appeal does not lie to this Court from the judgment of a justice of the peace, in a cause which has been tried before him by a jury. *Davidson* v. *Burr*, ii. 515.
50. See ACCOUNT, 1. *United States* v. *Rose*, ii. 567.
51. The question which may be asked of a juror when called up to be sworn is, "have you formed any opinion as to the guilt of the prisoner?" *United States* v. *Devaughn*, iii. 84.
52. If a juror after having been summoned, voluntarily forms and delivers an opinion as to the guilt or innocence of the prisoner, with a view to disqualify himself to serve on the jury at the trial, it is a contempt of Court, inasmuch as it tends to the obstruction of justice. *Ibid.*
53. See APPEAL, 14. *Denny* v. *Queen*, iii. 217.
54. *Id.* 15. *Smith* v. *Chase*, iii. 348.
55. See CHALLENGE, 25. *United States* v. *Watkins*, iii. 441.
56. See FALSE PRETENCES, 10, 18, 21, 24, 25. *Ibid.*
57. See JURORS, 1. *Chesapeake and Ohio Canal Co.* v. *Binney*, iv. 68.
58. The Court refused to grant a new trial, moved for on the ground that one of the jurors was brother-in-law of the plaintiff. *Orme* v. *Pratt*, iv. 124.
59. See CHALLENGE 29. *United States* v. *Summers*, iv. 334.
60. See EVIDENCE, 488. *United States* v. *Woods*, iv. 484.
61. See CORPORATION OF GEORGETOWN, 2. *Wright* v. *Corporation of Georgetown*, iv. 534.
62. See JUDGMENT, 91. *United States* v. *Peaco*, iv. 601.
63. See CHESAPEAKE AND OHIO CANAL COMPANY, 10. *Chesapeake and Ohio Canal Co.* v. *Union Bank*, iv. 75.
64. See EVIDENCE, 29. *United States* v. *Woods*, iv. 484.
65. A foreigner is not entitled to a jury *de medietate*, in Washington county, District of Columbia. *United States* v. *McMahon*, iv. 573.
66. See BALTIMORE AND OHIO RAILROAD COMPANY, 1 — 5. *Baltimore and Ohio Railroad Co.* v. *Van Ness*, iv. 595.
67. Upon an indictment for a riot, it is necessary to prove an agreement or proposal to do the unlawful act before it was done, or at the time of doing it; but from the doing of the act, accompanied by declarations of an intent to do it, the jury may infer a previous intent and agreement to do it, and mutually to assist each other in doing it, and in the absence of all contradictory evidence, they ought so to infer. *United States* v. *Stockwell et al.* iv. 671.
68. After an instruction has been given by the Court to the jury, at the request of either party, and argued by counsel on both sides, the Court will not permit the counsel to argue the same question of law to the jury, in contradiction to the opinion of the Court. *Ibid.*
69. The right of the jury in a criminal case, to decide the law, as well as the fact, results only from their power to find a general verdict. *Ibid.*
70. The question, whether one fact can be inferred from another, is a question of law, and to be decided by the Court; and if in law the inference can be drawn, it ought to be drawn if there be no contradictory evidence. *Ibid.*
71. Upon an indictment for a riot, the jury may infer the intent from the acts done, and ought so to infer in the absence of all contradictory evidence. *United States* v. *Fenwick et al.* iv. 675.
72. When either party, in a criminal prosecution, has asked an instruction to the jury upon a question of law, and the other party has proceeded to argue the point before the Court, and the Court has given an instruction

JURY, (*continued.*)
upon that question, the counsel has no right to argue the same question of law before the jury; but if either party does not join in the argument to the Court, but insists upon arguing it to the jury, the Court will order him to proceed with his argument; and will, after the argument is closed, give or refuse the instruction prayed, or give such other instruction as the Court shall think proper. *Ibid.*

73. Arson is not a capital offenee in the District of Columbia. The defendant, therefore, in the county of Washington, is not entitled to a peremptory challenge. *United States* v. *Henry H. White*, v. 73.

74. It is improper to give any instruction to the jury (after they have retired) upon any question not asked by the jury. *United States* v. *Richard H. White*, v. 116.

75. A new trial will not be granted beeause the jury, by mistake, took out with them the plaintiff's account, if it be withdrawn from them in a few minutes afterward by order of the Court. *Simms* v. *Templeman*, v. 163.

76. The Court will not permit counsel to argue to the jury against an instruction given by the Court in the cause. *United States* v. *Charles Columbus*, v. 304.

77. It is error in a judge to instruct the jury that the evidence is sufficient to convict the prisoner. The sufficiency is to be decided by the jury. *United States* v. *Fenwick*, v. 562.

78. See EVIDENCE, 571, 572. *Harriet Jones* v. *United States*, v. 647.

79. The jurors are not judges of the law, even in a criminal case. They have the power to give a general verdict upon the general issue, which includes the question of law as well as of fact; but when, by pleading, or by special verdict, or demurrer to evidenee, the law is separated from the fact, they have no right to decide the law; it must be decided by the judge. The right and power of the jury, whatever they may be, are exactly alike in civil and in criminal cases. The argument of counsel, on the law, should be addressed to the judge; and when the question of law is judicially presented to him, unmixed with the fact, either by demurrer to the evidence, a special verdict, or a motion for an instruction to the jury upon a hypothetical state of facts, it is not only the right, but the duty of the judge, to decide the question. The right of the judge to instruct the jury as to the law of the case, is not confined to the giving of such instructions as may be asked. After the argument of counsel has been closed on both sides, he may, if he will, instruct the jury as to the law, upon the whole evidence, leaving the question of fact entirely to the jury. The process of attaint is obsolete in England, and never was in practice in this country. In practice, both in this country and in England, the counsel of the defendants, in criminal cases, have been allowed to argue the law to the jury upon the general issue. The jury have the power to take upon themselves the responsibility of judging for themselves of the meaning of the law; and they may, if they will, but not of right, find a verdict against law; and such a verdict, if in favor of the defendant, will be as conclusive and effectual as if it were according to law.

According to the general praetice of the courts in this country, the defendant seems to have a right to be heard before the jury, upon his construction of the law, if the court has not already, after hearing the argument of the defendant's counsel, instructed the jury upon the law, in the same case; and there are few, if any, courts of criminal jurisdiction, who will suffer counsel to appeal from the court to the jury upon a question of law which the court has decided against the defendant after he has orally joined issue upon the question, and argued it before the Court. If the defendant's counsel does not join in the argument to the Court, but insists upon arguing it to the jury, the Court will require him to proceed

JURY, (*continued.*)
with his argument to the jury, and will, after argument, give or refuse such instruction as the Court shall think proper. It is the duty of the jury to follow the law as laid down by the Court. *Stettinius* v. *United States*, v. 573.

JUSTICE OF THE PEACE.
1. A justice of the peace in the District of Columbia, is not an officer, judicial or executive, of the government of the United States. *Wise* v. *Withers*, i. 262.
2. An authority which may be exercised by an individual magistrate, may be executed by many jointly. *Ex parte Burford*, i. 276.
3. A justice of the peace cannot discharge a prisoner who has been committed for trial for felony; nor can he take money in lieu of bail; but is not liable, criminally, unless he acted with evil intent. *United States* v. *Faw*, i. 486.
4. A justice of the peace is not liable in an action for false imprisonment upon an illegal warrant issued by him, unless issued maliciously. *Neale* v. *Minifie*, ii. 16.
5. Upon an appeal from the judgment of a justice of the peace, the cause is to be tried *de novo*. *Minifie* v. *Duckworth*, ii. 39.
6. The word "seal," in a justice's warrant, is a seal. *United States* v. *Hedges*, ii. 43.
7. A justice of the peace has no jurisdiction of an action against an administrator. *Ritchie* v. *Stone*, ii. 258.
8. See APPEAL, 5. *Howard* v. *United States*, ii. 259.
9. This Court has no jurisdiction to quash a *fieri facias* issued by the clerk of this Court by order of a justice of the peace; nor to render judgment of condemnation of the rights and credits returned upon such *fieri facias* as levied upon by a constable, in the hands of a third person. *Goulding* v. *Fenwick*, ii. 350.
10. The warrant, for violation of a by-law, should specify the by-law, and the manner of violating it. *Boothe* v. *Corporation of Georgetown*, ii. 356.
11. No appeal, to this Court, lies from the judgment of a justice of the peace for violating a by-law of Georgetown. *Ibid.*
12. A justice of the peace in Alexandria county, has no power to issue a *capias ad respondendum*, or a warrant of arrest for a small debt, before judgment. *Minor's case*, ii. 404.
13. See INSOLVENT, 37. *Frere* v. *Mudd*, ii. 407.
14. A signature, in black-lead pencil, of a warrant of a justice of the peace, is not a sufficient signature in law. *United States* v. *Thompson*, ii. 409.
15. See JURISDICTION, 34. *Ibid.*
16. *Id.* 38. *Cazenove* v. *Darrell*, ii. 444.
17. A justice of the peace, under the act of Congress for extending the jurisdiction, &c., has not jurisdiction of suits against administrators. *Adams* v. *Kincaid*, ii. 422.
18. See JURY, 44. *Sherburne* v. *Semmes*, ii. 446.
19. *Id.* 49. *Davidson* v. *Burr*, ii. 515.
20. See JURISDICTION, 41, 42. *Maddox* v. *Stewart*, ii. 523.
21. *Id.* 43. *Burton* v. *Varnum*, ii. 524.
22. *Id.* 44. *Moore* v. *Hough*, ii. 561.
23. See JUDGMENT, 58. *Oneil* v. *Hogan*, ii. 524.
24. See JURISDICTION, 47. *Mickum* v. *Paul*, ii. 568.
25. The authority of a justice of the peace in one of the States, may be proved by parol. *Winter* v. *Simonton*, ii. 585.
26. See JURISDICTION, 51. *Milburn* v. *Burton*, ii. 639.
27. See HABEAS CORPUS, 6. *Reardon's case*, ii. 639.

JUSTICE OF THE PEACE, *(continued.)*
28. See APPEAL, 11. *Coumbe* v. *Nairn*, ii. 676.
29. *Id.* 12. *Cross* v. *Blanford*, ii. 677.
30. See BY-LAW, 21. *Delany* v. *Corporation of Washington*, ii. 459.
31. A warrant, issued by a justice of the peace, for the penalty of a by-law, ought to state all the circumstances, required by the by-law, to constitute the offence; but the Court will disregard all such defects as would be disregarded after verdict in an action of debt, or information upon a penal statute. *McGunnigle* v. *Corporation of Washington*, ii. 460.
32. This Court has no jurisdiction in assault and battery by a slave on a white man; and will order him to be taken before a justice of the peace to be dealt with according to law. (See the clerk's minute-book, May 14, 1823.) *United States* v. *Negro Ellick*, ii. 412.
33. *Quære*, as to tenure of the office of justice of the peace. *Davidson* v. *Burr*, ii. 515.
34. See APPEAL, 13. *Thornton* v. *Corporation of Washington*, iii. 212.
35. *Id.* 14. *Denny* v. *Queen*, iii. 217.
36. See APPRENTICE, 10. *Charles* v. *Matlock*, iii. 230.
37. See JUDGMENT, 79. *Rhea* v. *Rawlings*, iii. 256.
38. See APPRENTICE, 11. *May* v. *Bayne*, iii. 335; *Lynch* v. *Ashton*, iii. 367.
39. See APPEAL, 15. *Smith* v. *Chase*, iii. 348.
40. See EVIDENCE, 411. *Hade* v. *Brotherton*, iii. 594.
41. See DETINUE, 2, 3. *Magnadier* v. *Duff*, iv. 4.
42. See APPEAL, 26. *Chase* v. *Smith*, iv. 90.
43. See JUDGMENT, 86. *Allen* v. *Arguelles*, iv. 170.
44. See CONTEMPT, 3. *United States* v. *Beale*, iv. 313.
45. See BY-LAW, 33, 34, 35. *Ex parte Thomas Williams*, iv. 343.
46. See CERTIORARI, 3. *Kennedy* v. *Gorman*, iv. 347.
47. See APPEAL, 27, 28. *Corporation of Washington* v. *Eaton*, iv. 352.
48. See CERTIORARI, 4. *Lenox* v. *Arguelles*, iv. 477.
49. See ATTACHMENT, 89. *Doyle* v. *Richards*, iv. 527.
50. See CORPORATION OF GEORGETOWN, 2. *Wright* v. *Corporation of Georgetown*, iv. 534.
51. See ATTACHMENT, 95. *Ex parte J. B. Gorman*, iv. 572.
52. See BY-LAW, 36 - 40. *Ex parte Julia Reed*, iv. 582.
53. See EQUITY, 97. *United States* v. *Cowing*, iv. 613.
54. A slave charged with larceny is to be tried and punished by a justice of the peace. *United States* v. *Simms*, iv. 618.
55. See APPRENTICE, 17. *Gody* v. *Plant*, iv. 670.
56. *Id.* 16. *Barrett* v. *McPherson*, iv. 475.
57. See FALSE IMPRISONMENT, 2. *Ingram* v. *Butt*, iv. 701.
58. See BY-LAW, 41, 42, 43. *Hall* v. *Corporation of Washington*, iv. 722.
59. See ADMINISTRATION, 43. *Foy* v. *Talburt*, v. 124.
60 See JURISDICTION, 69. *Moore* v. *Waters*, v. 283.
61. See ARREST, 19. *Johnson* v. *Daws*, v. 283.
62. See EXECUTION, 51. *Bowen* v. *Howard*, v. 308.
63. See APPEAL, 29. *Owner* v. *Corporation of Washington*, v. 381.
64. See JURISDICTION, 72. *Negro Harriett Johnson* v. *Corporation of Washington*, v. 434.
65. A justice of the peace cannot issue an execution as on a supersedeas upon the mere indorsement on the original judgment, that it was superseded. *Amelia Thomas* v. *Owen Summers*, v. 434.
66. See CERTIORARI, 7. *Homans* v. *Moore*, v. 505.
67. See JURISDICTION, 75. *Ennis* v. *Halmead*, v. 509.
68. See APPEAL, 31. *Jeffers* v. *Forrest*, v. 674.

JUSTIFICATION.
1. In an action upon the case for a libel, if the plaintiff aver that the words

JUSTIFICATION, (*continued.*)
amount to a charge of forgery; and if the words, under the circumstances stated in the declaration, are capable of that construction, the defendant, if he would justify, must, in his plea, justify the words to that extent; and show, in his plea, a clear case of forgery. Whether the words are, under the circumstances stated in the declaration, capable of such a construction, is a question of law to be decided by the Court. Whether the defendant used them in that sense and intended thereby to charge the plaintiff with forgery, is a question of fact arising upon the plea of not guilty, and exclusively to be decided by the jury, upon all the circumstance in evidence before them. This question cannot arise upon the issue joined on the plea of justification; because, by joining issue the plaintiff has admitted the plea of justification to be good, if true. *Kerr* v. *Force*, iii. 8.

2. The rule for construing words, in a libel, differs from the rule for construing averments in a plea. In the former case, the rule is, that the words shall be understood by the Court and jury in that sense which the author intended to convey to the minds of his hearers, as evinced by all the circumstances of the case; but the rule of construction as to pleas, especially as to pleas in justification of libel, is, that they shall be taken most strongly against the party pleading; and that a man shall not justify by intendment; but every thing must be precisely alleged. *Ibid.*
3. The Court, in considering a plea, cannot infer one fact from another, as a jury may; but is as much restricted to the precise facts, as it is in considering a special verdict. *Ibid.*
4. A plea in justification of libel, must be certain "to a certain intent in general;" it is, therefore, not true that a reiteration, in the plea, of the words contained in the libel with an averment that they are true, will be a good justification, unless the words of the libel should be so precise as to contain within themselves, every thing that can be inferred from them. *Ibid.*
5. The matter, alleged in the justification, to be true, must, in every respect correspond with the imputation complained of in the declaration. In order to ascertain what is the imputation contained in the libel, the Court must understand the words in the sense in which they think the writer intended they should be understood by those who should read or hear them. *Ibid.*
6. If a man, in a libel, says that he believes that a certain person committed a crime; his belief, although sincere, is no justification. *Ibid.*
7. It is actionable, in a libel to charge the plaintiff with fraudulently deceiving a person as to a fact, so as to induce him to indorse a note for a larger sum than he intended. *Ibid.*
8. In considering the language of a plea in justification, the Court is not at liberty to exercise the same latitude of construction and inference as it may in considering the words of a libel. It is not permitted to draw any inference of fact from the facts stated in the plea. *Ibid.*
9. If the libel charge the plaintiff with devising slanderous accusations against a person, the plea in justification, is defective if it does not aver that the plaintiff did devise slanderous accusations against him, and if it does not set forth the particular accusations devised. *Ibid.*
10. If the libel charge the plaintiff with moral obliquity, the plea in justification is defective if it does not set forth any acts of moral turpitude. *Ibid.*
11. The expressions, "unfairly and secretly computed;" "unjustly and unfairly attempted," and "artfully and purposely framed," used in a plea in justification, and in regard to the official act of a cashier, do not necessarily imply moral obliquity. *Ibid.*
12. Upon leave given to the defendant to amend his pleadings, the Court

JUSTIFICATION, (*continued.*)
will not receive pleas in justification which do not contain a justification of what they profess to justify. *Ibid.*
13. Where the plea professes to answer only a part of the actionable matter charged in the count, if the plaintiff, by his replication or demurrer, treat it as a plea to the whole matter, it is a discontinuance. But if the plaintiff by his replication or demurrer, treat it as a plea to that part only which it purports to answer, it is no discontinuance, provided that at the time of replying or demurring, he take judgment by *nil dicit* for that part of the count which is unanswered by the plea. *Ibid.*
14. When several distinct and independent pleas are pleaded to different and separate parts of a count, the pleas are not double and do not require the act of the statute; and if the plaintiff may reply or demur to each plea, and take judgment by default or *nil dicit* as to all the matter not covered by each plea, in succession, so as ultimately to get judgment for all the matter contained in his declaration; yet, by the same process, the defendant, if his pleas are all good, and the issues or demurrers should be decided in his favor, will have made out a complete bar to the whole of the same matter; and as the final judgment of the Court must be given upon the whole record, that judgment must be for the defendant. Where several distinct and valid pleas in bar, are, by the leave of the Court, under the statute, pleaded to the same count, and issues are taken thereon, if one of the issues be found for the defendant and the residue for the plaintiff, yet the judgment must be for the defendant. So if several distinct and valid pleas be, by the leave of the Court, pleaded to one and the same part of a count, and issues be taken thereon, and one of the issues be found for the defendant, the judgment, as to so much of the count as is answered by the plea, must be for the defendant, although the other issues be found for the plaintiff. *Ibid.*
15. Where there are separate and distinct pleas to different parts of the count, and issues taken thereon, and some of the issues are found for the plaintiff and some for the defendant, several damages should be assessed, and judgment will be rendered for the plaintiff as to the issues found for him, and for the defendant as to the issues found for him. And if, instead of taking issue, the plaintiff should demur to those pleas, [as he may safely do without fear of discontinuance if he confines his prayer for judgment on the demurrer to so much of his count as the plea professes to answer and prays judgment by *nil dicit* for the residue,] and some of the demurrers should be decided in favor of the plaintiff, and some in favor of the defendant, the plaintiff would have judgment and a writ of inquiry of damages as to those decided in his favor, and the defendant would have judgment upon the others. *Ibid.*
16. If it appears, upon the whole record, that any actionable part of the declaration remains unanswered by a sufficient plea, the plaintiff must have judgment for so much, if he shall have prayed judgment at the proper time, so as to avoid a discontinuance. But if it appears from the whole record that every actionable part of the declaration has been fully answered by a valid plea in bar, the truth of which has been admitted in the pleadings, or found by the jury, the judgment must be for the defendant. *Ibid.*
17. If some of the several matters pleaded be good justifications of what they profess to justify, and others be not, the plaintiff must demur to the latter, and plead over to the others. If he were to demur to the whole as one plea, and if one of the several matters pleaded should be a good justification of what it purports to justify, the demurrer must be overruled in the same manner as a demurrer to a whole declaration would be overruled if any one of the counts should be good. *Ibid.*
18. If an entire plea do not answer the whole count, or if a plea to a part of a

JUSTIFICATION, *(continued.)*

count do not answer the whole part which it professes to answer, it is bad upon demurrer, and cannot derive aid from any other plea; but when a plea to part of a count is an answer to such part, it needs no aid from any other plea; it is sufficient for all that it professes to answer. *Ibid.*

19. If a plea be a good justification of what it purports to justify, the plaintiff cannot treat it as a nullity, and take judgment by *nil dicit* for the whole matter contained in his declaration. He must demur or reply to the plea, and take judgment by default for what remains unanswered. If the plaintiff demurs to the plea, and prays judgment for the whole matter in his declaration, he admits that the defendant has answered to the whole matter, but answered badly; and as the plea professes to answer only part of that matter, the plaintiff, by such demurrer, impliedly abandons all that part which the plea does not profess to answer, and, therefore, discontinues his suit for so much; and a discontinuance as to part is a discontinuance as to the whole. *Ibid.*
20. It is actionable in a libel to charge the plaintiff with such matters "as induce an ill opinion to be had of the plaintiff," such as to charge him with maliciously devising slanderous accusations against a third person. *Ibid.*
21. A charge of moral obliquity must be proved by some act done *malâ fide*. *Ibid.*
22. A man cannot defame in one sense, and justify in another. *Ibid.*
23. The *dictum* of Starkie, that the same degree of certainty and precision are required in this plea, as are requisite in an indictment or information, is not supported by the cases cited by him to confirm it. All the certainty required, is that the plea shall contain a clear and distinct statement of the facts which constitute the grounds of defence, so that they may be understood by the party who is to answer them, by the jury who are to ascertain the truth of the allegations, and by the Court who are to give judgment. *Ibid.*
24. An averment that the plaintiff did falsely, fraudulently, and unlawfully, alter a note so as materially to change the terms and conditions thereof, is a good plea in justification of a charge of forgery. *Ibid.*
25. If there be judgment for the plaintiff upon demurrer to some of the defendant's pleas, and if issue of fact be joined upon the defendant's other pleas, the jury, impanelled to try the issues of fact, may be charged to assess the plaintiff's damages upon the judgment upon the demurrers, in case they should find the issues of fact for the plaintiff; but this does not give the plaintiff a right to open and close the argument to the jury, where the defendant holds the affirmative of all the issues of fact. *Ibid.*

KIDNAPPING.

1. In an indictment under the seventeenth section of the Penitentiary Act of the District of Columbia, it is not necessary to aver that the defendant was a free man. *United States* v. *Henning*, iv. 645.
2. That section does not apply to negroes kidnapped out of this district and brought within it. *Ibid.*
3. *Quære*, whether it applies to the seizure or seduction of any free negro or mulatto not a resident of the District of Columbia? *Ibid.*

LANDLORD.

1. See DISTRESS, 26 – 30. *Semmes* v. *McKnight*, v. 539.
2. See ACTION ON THE CASE, 12. *Brown* v. *Corcoran*, v. 610.

LANDS.

1. One half of the real estate of a testator in Virginia, is liable for his debts, although not charged by his will. *Quære?* *Prime* v. *McRea*, i. 201.

LANDS, (*continued.*)
2. By the laws of Virginia, in 1801, a Court of Equity could decree a sale of one moiety of the fee-simple of the deceased debtor's lands in the hands of his heirs at law. *Id.* 294.
3. The statute of Virginia against the selling of pretensed titles, does not vacate the deed as between the parties. If the creditor accept a deed of land in payment of a debt, it is a bar to an action for the debt; and if the title be defective, the creditor must look to his warranty. *Miller* v. *Young*, ii. 53.
4. See FRAUD, 17. *Conway* v. *Sherron*, ii. 80.
5. See CONTRACT, 17. *Dunlop* v. *Hepburn*, ii. 86.
6. See FRAUD, 22, 23. *Williams* v. *Threlkeld*, ii. 307.
7. See ATTACHMENT, 53. *Hough* v. *Smoot*, ii. 318.
8. See INSOLVENT, 44. *Farmers Bank* v. *Robbins*, ii. 471.
9. See JUDGMENT, 95, 96, 97, 98. *Rachel Jackson* v. *Bank of the United States*, v. 1.

LARCENY.
1. This Court has not jurisdiction of larceny by a slave in Washington county. *United States* v. *Negro Jack*, i. 44.
2. On a trial for larceny of the goods of T. L., evidence that they were the property of a deceased person in the possession and management of T. L., will support the indictment. *United States* v. *Barlow*, i. 94.
3. This Court has no jurisdiction of larceny by a slave, and will quash the indictment, and send the slave to a justice of the peace to be tried. By consent of parties, the Court will try the issue whether slave or not. *United States* v. *Louder*, i. 103.
4. Upon indictment for stealing a check upon a bank, it is not necessary to produce the check itself in order to admit parol evidence that it was presented at the bank. *United States* v. *Wilson*, i. 104.
5. A slave may be tried for larceny, by this Court sitting in Alexandria. *United States* v. *Betty Wright*, i. 123.
6. *Quære*, whether stealing a bank-note is larceny within the Act of Congress of April 30, 1790, § 16. *United States* v. *Murray*, i. 141.
7. In larceny, the owner of the stolen goods is a competent witness for the United States, after releasing to them all his interest in the fine. *United States* v. *McCann & Delany*, i. 207; *United States* v. *Scipio Brown*, i. 210.
8. If goods be stolen in Maryland, and brought by the thief into this district, he may be convicted and punished here. *United States* v. *Frank Tolson*, i. 269.
9. It is not felony to steal rails inserted into posts fixed in the ground, if severed and taken away at one time. *United States* v. *Wagner*, i. 314.
10. If a statute makes it felony to steal the notes of any incorporated bank, the statute, by which that bank was incorporated, thereby becomes a public statute. *United States* v. *Porte*, i. 369.
11. An indictment upon the Maryland Act, 1793, c. 35, must state of what bank the stolen notes were, and whether the bank was incorporated by the United States, or by any particular bank. It is not sufficient to make the averment in the terms of the act. *Ibid.*
12. Stealing wood, in collusion with the owner's slave, is larceny. *United States* v. *Walker*, i. 402.
13. The owner of goods stolen by a slave in Alexandria, is not a competent witness for the prosecution, because he is entitled to one half of the fine which the Court must impose, under the Act of Congress. *United States* v. *Milly Rhodes*, i. 447.
14. It is not larceny to steal fence logs, the fence being by law annexed to the freehold. *United States* v. *Smith*, i. 475.

LARCENY, (*continued.*)
15. Peremptory challenge is not allowed in cases of larceny, in Washington county. *United States* v. *McPherson*, i. 517.
16. See INDICTMENT, 30. *United States* v. *McNemara*, ii. 45.
17. A person who steals goods in Maryland and brings them here, is guilty of larceny here. *United States* v. *Haukey*, ii. 65.
18. In Alexandria, a prisoner indicted under the Act of Congress, for larceny, has the right of peremptory challenge. *United States* v. *Negro Peter*, ii. 98.
19. Bank-notes are not goods and chattels nor money; stealing them, therefore, is no offence at common law. *United States* v. *Negro Henry Bowen*, ii. 133.
20. An indictment will not lie at common law for stealing a mulatto boy called William Foote, of the price of $500, of the property, goods, and chattels of one F. T———, if he is not averred to be a slave. *United States* v. *Godley*, ii. 153.
21. See BANK NOTE, 6. *United States* v. *Betty Read*, ii. 159.
22. Upon an indictment in Alexandria, for larceny, the prisoner is entitled to peremptory challenge. *United States* v. *Thomas Gee*, ii. 163.
23. Horse-stealing in the District of Columbia, is punishable as an ordinary larceny under the Act of Congress of 1790, for the punishment of certain crimes, although by the Maryland Acts of 1793, c. 57, § 10, and 1799, c. 61, § 1 and 3, the punishment is death, or labor on the roads in Baltimore county. *United States* v. *Samuel Black*, ii. 195.
24. When the punishment may be death, the Court will allow peremptory challenge. *Ibid.*
25. Upon an indictment under the Virginia Act of December 26, 1792, for feloniously breaking the storehouse of Cook & Clare, and taking therefrom goods of the value of more than four dollars, the jury may find the prisoner guilty of simple larceny. *United States* v. *William Read*, ii. 198.
26. See INDICTMENT, 45, 46. *United States* v. *Golding*, ii. 212.
27. If goods be delivered to a workman for a special purpose, and he afterwards takes them away with intent to steal them, it is larceny. *United States* v. *Strong*, ii. 251.
28. See HORSE-STEALING, 3. *United States* v. *Krouse*, ii. 252.
29. If a man steal goods in North Carolina and bring them here, he is guilty of larceny here. *United States* v. *Mason*, ii. 410.
30. Bank-notes are not goods and chattels, nor money; and cannot be the subject of larceny at common law. *United States* v. *Carnot*, ii. 469.
31. In larceny, "one silver coin of the value of fifty cents," is a sufficient description of the property stolen. *United States* v. *Rigsby*, ii. 364.
32. See EVIDENCE, 349. *United States* v. *Negro Richard*, ii. 439.
33. See JOINT THEFT. *United States* v. *Holland*, iii. 254.
34. See INDICTMENT, 73. *United States* v. *Henry Thompson*, iv. 335.
35. *Id.* 74. *United States* v. *Negro John*, iv. 336.
36. *Id.* 75. *United States* v. *Goddard*, iv. 444.
37. See BILLS AND NOTES, 202. *United States* v. *John Lee*, iv. 446.
38. A slave convicted of larceny in Alexandria, D. C., is to be sentenced to be burnt in the hand and whipped. *United States* v. *Negro Nathan, a slave*, iv. 470.
39. See INDICTMENT, 94. *United States* v. *Negro Nelson*, iv. 579.
40. *Id.* 96, 97. *United States* v. *Richard Barry*, iv. 606.
41. See JUSTICE OF THE PEACE, 54. *United States* v. *Simms*, iv. 618.
42. See EVIDENCE, 507. *United States* v. *Lodge*, iv. 673.
43. See BARON AND FEME, 15. *United States* v. *Murphy*, iv. 681.
44. See EVIDENCE, 509. *United States* v. *Tarlton*, iv. 682.

LARCENY, (*continued.*)
45. See CONFESSION, 12. *United States* v. *Kurtz et al.* iv. 682.
46. See INDICTMENT, 109. *United States* v. *McDaniel*, iv. 721.
47. See BARON AND FEME, 17. *United States* v. *Parsons*, iv. 726.
48. See INDICTMENT, 112. *United States* v. *Negro Ralph Prior*, v. 37.
49. See FALSE PRETENCES, 35. *United States* v. *Robertson*, v. 38.
50. See BANK, 27. *United States* v. *Negro Frank Pearl*, v. 392.
51. If the goods of several persons are stolen at the same time, the stealing of each persons goods constitutes a distinct offence, and may be the subject of a distinct and separate indictment; but they may be joined in one indictment; and whether they shall be prosecuted jointly or separately, is a question properly left to the discretion of the Attorney of the United States. *United States* v. *Beerman*, v. 412.
52. It is error in the judge to instruct the jury that certain facts constitute larceny, unless the *animus furandi* be expressly stated as one of those facts, and unless the fact be also stated that the goods were taken without the consent of the owner. *Weston* v. *United States*, v. 492.

LEASE.
1. A lease for ninety-nine years, not acknowledged and recorded, is not good for seven years, but is evidence of the rate of rent in an action for use and occupation. *Brohawn* v. *Van Ness*, i. 366.
2. If the assignee of the lessee bind himself to the lessee, to pay the rent to the lessor, the lessor may maintain an action of debt against the assignee for the rent; although the assignment should not be acknowledged, or proved, and recorded agreeably to the Virginia Act of December 13, 1792, for regulating conveyances. *Cook* v. *Myers*, i. 6.
3. See EQUITY, 117. *Van Ness* v. *Hyatt et al.* v. 127.
4. See EVIDENCE, 545. *Slacum* v. *Brown*, v. 315.
5. See DISTRESS, 26, 27, 28, 29, 30. *Semmes* v. *McKnight*, v. 539.
6. If there be a lease for years, with right of reëntry for non-payment of the rent, and six months rent be in arrear, and no sufficient personal property on the premises to countervail the rent arrear, the lessor may, under the statute of 4 Geo. 2, which is in force in the county of Washington, District of Columbia, recover in ejectment as if he had made a strict demand of the rent and had entered. But the lessor cannot recover while the lease is in full force, and it is in full force unless forfeited by the right of reëntry and the proceeding to serve a declaration in ejectment according to the provisions of that statute; six months rent being in arrear, and not sufficient goods on the premises to countervail the rent. *Bradlay et al.* v. *Conner*, v. 615.

LEGACY.
1. A bequest of a slave gives no title until assented to by the executor. *Lee* v. *Ramsay*, i. 435.
2. A legatee, under the will of General George Washington, received by assignment from the executors, on account of his legacy, a bond and mortgage taken by them from a purchaser of the estate, which bond was for a sum larger than the legacy. The assignee covenanted not to hold the executors liable upon their assignment, and to pay back the surplus, and to indemnify and save harmless the executors from any damage by reason of the assignment. The obligor became insolvent, and the sales of the mortgaged property did not produce the amount of the legacy;
Held, that the estate of General Washington was not liable under the Virginia law of December 13, 1792, § 41, to make good to the legatee, the deficiency; and, upon a cross-bill, he was held liable to the executors for the amount in which the assigned debt exceeded the legacy. *Washington* v. *Washington*, iii. 77.

LEGACY, (*continued.*)
3. Coffee in a bag, wine in bottles, and brandy in a cask, laid in by the testator for the current use and consumption of himself and family, did not pass under a bequest to his wife of "all his furniture and other household effects in both of his residences." The bag, bottles, and cask, go with their contents, as incident thereto. *Foxall* v. *McKenney*, iii. 206.
4. The words, "all my servants," were limited to house-servants by the intention of the testator as gathered from other parts of the will. *Ibid.*
5. A bequest of the use of the testator's "property" in a certain baking business, comprehends the use of the testator's servants employed therein. *Ibid.*
6. See ADMINISTRATION, 54. *Moffit* v. *Varden*, v. 658.
7. See DISTRIBUTION, 2, 3. *Ibid.*
8. See DEVISE, 8, 9, 10. *Newton* v. *Carberry*, v. 632.

LEVY-COURT.
1. The Levy-Court of Washington county, District of Columbia, are only entitled to a moiety of the fixed fines, penalties, and forfeitures accruing under the adopted laws of Maryland; not of the common law discretionary fines, nor of those imposed under original acts of Congress. *Levy-Court* v. *Ringgold*, ii. 659.
2. The Levy-Court of Washington county is not bound to repair the gaol erected by the United States in that county. *Ibid.*
3. The marshal had no right to expend the funds of the Levy-Court of Washington county, in the repairs of the gaol, without their order. *Ibid.*
4. The Levy-Court is authorized by the Act of Congress of the 1st of July, 1812, § 12, to ascertain conclusively, the sum required for rebuilding the bridge over Rock-Creek. *The United States, for the Levy-Court* v. *Corporation of Washington*, ii. 174.
5. The following are items of general county expenses and charges, to be borne and defrayed by the city of Washington, and the other parts of the county equally, namely: for the attendance of the members of the Levy-Court; rent of rooms; salary of the clerk; removing records; advertising notices of meetings; summoning a member to attend; expense of assessment, and commission for collecting county taxes. *Levy-Court* v. *Corporation of Washington*, ii. 175.

LIBEL.
1. Comparison of handwriting is evidence to prove the publication of a libel. *Brooke* v. *Peyton*, i. 96.
2. It is a libel to print and publish these words, "he is a lying, slanderous rascal;" and it is no justification, that the plaintiff had stated what was not true, unless he had stated it maliciously. *Snowdon* v. *Lindo*, i. 569.
3. See ELECTION, 2. *McClean* v. *Fowle*, ii. 118.
4. See EVIDENCE, 304. *Evans* v. *Evans*, ii. 240.
5. See JUSTIFICATION, 1 – 25. *Kerr* v. *Force*, iii. 8.
6. See BAIL, 71. *Withers* v. *Thornton*, iii. 116.
7. See EVIDENCE, 511 – 520. *United States* v. *Crandell*, iv. 683.
8. See BAIL, 102. *Mayo* v. *Smith et al.* v. 569.

LICENSE.
1. The widow, administratrix of a deceased tavern-keeper, cannot sell spirituous liquors under her husband's license, nor can she transfer it to another. *United States* v. *Overton*, ii. 42.
2. An indictment will not lie against an inhabitant of the city of Washington for retailing spirituous liquors without a license. *United States* v. *Dixon*, ii. 92.
3. See FERRIES, 1. *Berry's case*, ii. 13.

LICENSE, (*continued.*)
4. *Id.* 2. *Young's case*, ii. 453.
5. See CORPORATION OF WASHINGTON, 27. *Carey* v. *Corporation of Washington*, v. 13.
6. A license to practice medicine is not necessary if there be no board of examiners *de jure*. *United States* v. *Mc Williams*, v. 62.
7. See CORPORATION OF WASHINGTON, 31. *Corporation of Washington* v. *Barber*, v. 157.
8. *Id.* 34, 35. *Corporation of Washington* v. *Lynch*, v. 498.

LIEN.
1. See BANK OF POTOMAC. *Burford* v. *Crandell*, ii. 86.
2. See BANK, 4. *Neale* v. *Janney*, ii. 188.
3. A contract to deliver hides, then in the vat, to the plaintiff, to indemnify him for his responsibility for a debt due by the defendant, which has since been satisfied, will not constitute a lien upon the hides in favor of the plaintiff, to indemnify him for his responsibility for another debt of the defendant's, for which the plaintiff is liable, where the rights of a third person have intervened. *Talbot* v. *McPherson*, ii. 281.
4. See EXECUTION, 23. *Maul* v. *Scott*, ii. 367.
5. See INSOLVENT, 44. *Farmers' Bank* v. *Robbins*, ii. 471.
6. See DUTIES, 4. *United States* v. *Murdock et al.* ii. 486.
7. See BANK OF WASHINGTON, 1, 2, 3. *Brent* v. *Bank of Washington*, ii. 517.
8. See INSOLVENT, 50. *Owen* v. *Glover*, ii. 578.
9. See FRAUD, 28. *Mc Clean* v. *Miller*, ii. 620.
10. A vendor who never had the legal estate in the land, and who has taken a separate security, has no lien for the purchase money. *Strider* v. *King*, iii. 67.
11. See EQUITY, 44. *Kurtz* v. *Hollingshead*, iii. 68.
12. See BANK OF WASHINGTON, 4. *Pierson et al.* v. *Bank of Washington*, iii. 363.
13. The lien which a builder in Washington has under the Maryland Act of 1791, c. 45, § 10, is a remedy *in rem* only, and not *in personam*. The lien commences with the recording of the contract for building, and does not overreach prior incumbrances. *Homans* v. *Coombe*. iii. 365.
14. See EQUITY, 78. *Corporation of Georgetown* v. *Smith*, iv. 91.
15. A master of a vessel has no lien for his wages, upon goods consigned to, and owned by his owners. *Vowell* v. *Bacon*, iv. 97.
16. See BANK OF COLUMBIA, 10. *Smith* v. *Bank of Columbia*, iv. 143.
17. In cases under the lien law, the Court will not oblige the defendant to plead at the return term. *King et al.* v. *Shaw*, iv. 457.
18. A person furnishing materials and labor in the erection of a building in the city of Washington, cannot claim the benefit of the lien given by the Act of Congress of the 2d of March, 1833, ch. 79, after the expiration of two years from the commencement of the building, unless an action shall have been instituted, or the claim filed in the clerk's office within three months after performing the work and furnishing the materials. *Mc Clellan* v. *Withers*, iv. 668.
19. See EQUITY, 111. *Thompson* v. *King*, v. 93.
20. See EXECUTION, 58. *Cunningham* v. *Offutt*, v. 524.
21. No debt for materials furnished for building a house in Washington, Alexandria, or Georgetown, D. C., will, under the Act of Congress of March 2, 1833, remain a lien upon the house for more than two years from the commencement of the building, unless an action for the recovery of the debt be instituted, or the claim filed within three months after the furnishing of the materials, &c. *Waller* v. *Dyer et al.* v. 571.
22. See JUDGMENT, 95, 96, 97, 98. *Rachel Jackson* v. *Bank of the United States*, v. 1.

LIMITATION.

1. The statute of limitations cannot be given in evidence upon the general issue. *Neale* v. *Walker*, i. 57; *Gardner* v. *Lindo*, i. 78; *McIver* v. *Moore*, i. 90.
2. After office-judgment, the Court will not receive a plea of limitations; nor upon reinstalment after *non pros;* unless upon affidavit of merits. *Ibid. Smith* v. *Stoops*, ii. 38.
3. The statute of limitations does not apply to accounts between merchants *Wilson* v. *Mandeville et al.* i. 433, 452.
4. *Non assumpsit infra tres annos* is not a good plea to an action upon a promissory note payable thirty days after date. *Ferris* v. *Williams*, i. 475.
5. The State of Delaware is beyond seas in regard to the District of Columbia, within the meaning of the statute of limitations. *Ibid.*
6. The Act of Congress of April 30, 1790, § 32, which limits the prosecution of offences not capital, to two years, applies to cases of assault and battery at common law in the District of Columbia. *United States* v. *Slacum*, i. 485.
7. In actions against executors, the statute of limitations may be pleaded after office judgment. *Wilson* v. *Turberville's Executors*, i. 492.
8. A clause in a will, directing the testator's debts to be paid out of the rents of his real estate, does not take the case out of the statute of limitations, if the plaintiff does not seek his remedy under the will. *Ibid.* 512.
9. After judgment for the plaintiff on demurrer to the replication to the plea of limitations, the Court will not permit the defendant to withdraw his demurrer, and rejoin specially, unless he can show, by affidavit, that it is necessary to the justice of the case. *Wilson* v. *Mandeville & Jamesson*, i. 452.
10. A British subject who took a bond from his debtor payable to a citizen of the United States, cannot avoid the statute of limitations under the clause of the treaty removing all legal impediments, &c. *Auld* v. *Hoye*, i. 544.
11. The Court will not permit the statute of limitations to be pleaded to an action of trespass for mesne profits, after the rule day, but upon payment of all antecedent costs, and a continuance of the cause. *Marsteller* v. *McClean*, i. 550.
12. If the holder of an accepted bill of exchange be beyond seas at the time his cause of action accrues, and so continues until suit brought, the statute of limitations is no bar, although the indorser was always a resident of the United States. *Irving* v. *Sutton*, i. 567.
13. The disability of one joint plaintiff does not take the case out of the statute of limitations. *Marsteller* v. *McClean*, i. 579.
14. In Virginia, an executor may pay a debt barred by the act of limitations. *Fairfax* v. *Fairfax*, ii. 25.
15. After an interlocutory decree, and an issue ordered, the Court will not permit the defendant to plead the statute of limitations, and to file an answer. *Wilson* v. *Turberville*, ii. 27.
16. The Court will not permit the statute of limitations to be pleaded after the rule day, unless it be shown by affidavit, to be necessary for the justice of the case. *Thompson* v. *Afflick*, ii. 46.
17. The Maryland Statute of Limitations of twelve years is a bar to an action, against the devisee of the obligor, brought in Alexandria, upon a bond executed and assigned in Maryland, all the parties having continued to reside in Maryland, until the expiration of the twelve years. The payment of part of the debt by the executor within the twelve years, does not take the case out of the statute as against the heirs and devisees. *Gilpin* v. *Plummer*, ii. 54.
18. The Act of Congress of April 30, 1790, limiting the prosecution for misdemeanors to two years, is applicable to common-law misdemeanors in the District of Columbia. *United States* v. *Porter*, ii. 60.

LIMITATION, (*continued.*)
19. The Court will permit the act of limitations to be pleaded after the rule day, upon an affidavit showing it to be a fair defence under the circumstances of the case. *Beatty* v. *Van Ness*, ii. 67.
20. The defendant has a right to plead the statute of limitations at the first term after office judgment; it being an issuable plea. *Morgan* v. *Evans*, ii. 70.
21. In action upon a bond payable by instalments, the jury may, and ought to presume payment of any instalments payable more than twenty years before the commencement of the suit, and may presume payment of any instalment payable nineteen years and ten months before suit brought. *Miller* v. *Evans*, ii. 72.
22. In Alexandria, D. C., the statute of limitations may be pleaded upon setting aside the office judgment at the first term. *Gregg* v. *Bontz*, ii. 115.
23. See BAIL, 55. *Craik* v. *Hilton*, ii. 116.
24. The acknowledgment of the original cause of action, accompanied by a refusal to pay unless compelled by law, will not take the case out of the statute of limitations. *Jenkins* v. *Boyle*, ii. 120.
25. The Act of Limitations runs in favor of an insolvent debtor notwithstanding his discharge under the Insolvent Act. *Denny* v. *Henderson*, ii. 121.
26. In Virginia, a person, who has been in possession of a slave for five years, need not show the deed under which he claims title. *Love* v. *Boyd*, ii. 156.
27. The Act of Limitations of Virginia is not a bar to a judgment, if execution has been issued thereon and returned within ten years after the date of the judgment. *Irwin* v. *Henderson*, ii. 167.
28. The offer of terms of compromise is not sufficient to take the case out of the statute of limitations. *Neale* v. *Abbot*, ii. 193.
29. If the statute of limitations be pleaded after the plea day, without leave of the Court, the plea will, on motion, be ordered to be stricken out. *Scott* v. *Lewis*, ii. 203.
30. A promise to pay "when able," will take the case out of the statute of limitations without proof that the defendant has since been able to pay the debt. *Davis* v. *Van Zandt*, ii. 208.
31. The statute of limitations may be pleaded on the first day of the term next after the office-judgment. *Mechanic's Bank* v. *Lynn*, ii. 246.
32. If a defendant instruct his attorney to plead the statute of limitations, and he plead it after the rule day, the Court will refuse to order the plea to be stricken out, if the attorney, having been recently admitted to practice, was ignorant of the rule which requires that such a plea should be filed strictly within the rule day. *Witzel* v. *Bussard*, ii. 252.
33. Distress for taxes due to the Corporation of Washington is not barred by the statute of limitations. *Hogan* v. *Ingle*, ii. 352.
34. The Court will permit an executor to plead the statute of limitations at the trial term, to which plea the plaintiff cannot make more than one replication. *Offutt* v. *Hall*, ii. 363.
35. The defendant's expressing a willingness to pay a debt barred by the statute of limitations if a certain account should be allowed as a set-off, is not such an acknowledgment as will take the case out of the statute. *Nichols* v. *Warfield*, ii. 429.
36. Terms offered by way of compromise cannot be given in evidence to rebut the statute of limitations. *Ash* v. *Hayman*, ii. 452.
37. The defendant said he thought the plaintiff had charged up the note to his account, if that was the case he would "attend" to it; this is sufficient to rebut the plea of the statute of limitations. *Bank of Alexandria* v. *Clarke*, ii. 464.
38. If the plaintiffs are misnamed in the title of the cause in the margin of the

LIMITATION, (*continued.*)
plea of limitations, the plea is bad, on special demurrer. *Bank of Columbia* v. *Jones*, ii. 516.
39. The English Statute, West. 2, 13, Ed. 1, c. 45, which gives a *scire facias* to revive judgments in personal actions, is still in force in Virginia for that purpose. *Offutt* v. *Henderson*, ii. 553.
40. The Act of Virginia of December 19th, 1792, § 5, limiting the time of issuing writs of *scire facias* in certain cases, is an act of limitations and must be pleaded. The defendant cannot avail himself of it by plea of *nul tiel record*, nor by motion to quash the *scire facias;* nor by motion in arrest of judgment. It does not apply to a case where an execution has been issued and returned. *Ibid.*
41. See EVIDENCE, 377. *Rhodes* v. *Hadfield*, ii. 566.
42. See BANK OF COLUMBIA, 5, 6. *Bank of Columbia* v. *Cook*, ii. 574.
43. *Id.* 7. *Bank of Columbia* v. *Sweeny*, ii. 704.
44. In allowing claims upon a trust-fund as between contending creditors, a claim upon a judgment of more than twelve years standing must be rejected without pleading the statute of limitations, as there was no time when the debtor or his administrator could plead it. *Farmers' Bank* v. *Melvin et al.* ii. 614.
45. The Statute of Limitations must be pleaded strictly within the rule-day, unless the Court, for good cause shown, shall permit it to be pleaded afterward. *Union Bank* v. *Eliason*, ii. 629.
46. *Non assumpsit infra tres annos* is not a good plea to an action against the maker of a promissory note payable sixty days after date. It should be *actio non accrevit. Id.* 667.
47. Upon a note payable upon demand, the cause of action does not accrue until demand; and if the debtor remove before demand, the act of limitation is no bar. In the county of Washington, D. C., the act of limitations of Maryland is no bar to an action upon a note made by the defendant in Massachusetts if the plaintiff has always resided in that State, and to the plea of the statute he may reply "beyond seas." *Lee* v. *Cassin*, ii. 112.
48. See AMENDMENT, 31. *Bell* v. *Davis*, iii. 4.
49. After the cause of action was barred by the act of limitations, the defendant said he received the things, but paid for them by a check on the bank of Washington, and referred the witness to the teller of the bank; *Held*, not sufficient to take the case out of the statute. *Reynolds* v. *Calvert*, iii. 211.
50. See BANK OF COLUMBIA, 8. *Bank of Columbia* v. *Moore*, iii. 292.
51. An offer to compromise the debt by paying one half without interest, is not sufficient to take the case out of the statute of limitations. *Bank of Columbia* v. *Sweeny*, iii. 293.
52. See EQUITY, 57. *Hayman* v. *Keally*, iii. 325.
53. Possession of a slave under an absolute bill of sale, without notice of a prior bill of sale by the same vendor to a trustee for the benefit of the vendor's wife and children, is adverse to the trustee, and if continued five years, is a bar to his right of action, although the second deed was made with the consent of the vendor's wife. *Reardon* v. *Miller*, iii. 344.
54. See EVIDENCE, 435. *Clarke* v. *Mayfield*, iii. 353.
55. A declaration by the defendants to the marshal, at the time of serving the writ, [which did not specify the cause of action nor its amount] that they would pay the debt if they were not arrested upon other judgments then existing against them and compelled to clear out under the Insolvent Law, is not sufficient to take the case out of the act of limitations, although the defendants were not arrested upon other judgments; but if the cause of action and its amount were mentioned to them at the time of

LIMITATION, (*continued.*)
such declaration, it may be left to the jury; and if they should find that the promise referred to that particular cause of action, it would be sufficient in law to take the case out of the statute. *Young* v. *Wetzel et al.* iii. 359.
56. See ADMINISTRATION, 33. *Wilson* v. *Rose*, iii. 371.
57. See FALSE PRETENCES, 15. *United States* v. *Watkins*, iii. 441.
58. The fact, that the plaintiff brought an action, in the name of the Corporation of Washington, against the managers of the lottery upon their bond, to recover one fourth part of the prize drawn by ticket No. 1037, which action was dismissed by the corporation after it had been pending three years, is no bar to the plea of the act of limitations. *McCue* v. *Corporation of Washington*, iii. 639.
59. See BILLS AND NOTES, 186. *Bank of Columbia* v. *Moore*, iii. 663.
60. See JOINT DEFENDANTS, 9. *Bank of Columbia* v. *Hyatt et al.* iv. 38.
61. See AGENT, 17. *United States* v. *Nourse*, iv. 151.
62. An offer by the defendant to the plaintiff's agent, after the commencement of the suit, to pay the debt in the manner and upon the terms which he was not authorized to accept, is not a sufficient promise to take the case out of the statute of limitations. *Hamilton* v. *Carnes*, iv. 531.
63. The limitation of twelve years in the Maryland Statute of 1715, c. 23, § 6, does not continue to run from the date of the judgment, if it has been revived by *scire facias* within the twelve years. The expression "Twelve years standing," means twelve years standing without any proceeding towards enforcing payment. The plea is not supported unless twelve years have elapsed since the revival by *scire facias*. *Digges* v. *Eliason*, iv. 619.
64. See JUDGMENT, 93. *Bank of Washington* v. *Neale*, iv. 627.
65. If there be two counts in the declaration, and the Statute of Limitations be pleaded to both, it is not necessary that it should be supported as to both; but it may be supported as to both or either. *Chew* v. *Baker*, iv. 696.
66. An account in bar which consists of *debits* only against the plaintiff, does not take the plaintiff's cause of action out of the statute of limitations, although the last item of *debit* be within the three years. *Ibid.*
67. See CORPORATION OF WASHINGTON, 23. *United States* v. *Gorman*, iv. 574.
68. See CERTIORARI, 5. *Nicholls* v *Corporation of Georgetown*, iv. 576.
69. See JUDGMENT, 95. *Jackson* v. *Bank of the United States*, v. 1.
70. The Court will not quash an indictment because it appears upon the record that it was not found within two years after the offence committed, for that would deprive the United States of the right to reply that the defendant was a person fleeing from justice; or to show it in evidence on the trial. The defendant may avail himself of the limitation, either by special plea or by evidence upon the general issue. *United States* v. *Richard H. White*, v. 38.
71. The statute of limitations runs in favor of the offender, although it was not known to the United States or any of their officers of justice, that he was the person who committed the offence. *Ibid.*
72. The departure of the offender from the vicinity of the place wherein the offence was committed, to his usual residence in another part of the United States, for the purpose of avoiding punishment for that or any other offence, is a fleeing from justice, and the statute of limitations is no bar to the prosecution, unless within two years he returned to the place wherein the offence was committed, and his return was so open and public, and under such circumstances, that opportunity was afforded, by the use of ordinary diligence and due means, to have arrested him, and that

LIMITATION, (*continued.*)
two years, or more, have elapsed since that period, to the time of finding the indictment. *Quære? Ibid.*
73. See EVIDENCE, 536. *United States* v. *Henry H. White*, v. 73.
74. *Id.* 538. *United States* v. *Richard H. White*, v. 116.
75. If a statute punish that, as a misdemeanor, which, at common law, was a felony, the limitation of a prosecution under that statute, is that of misdemeanor, and not that of felony. *United States* v. *Henry H. White*, v. 73.
76. The limitation is applicable to misdemeanors created by statute subsequent to the act of limitation. *Ibid.*
77. The defendant is not entitled to the benefit of the limitation, if, within the two years, he left any place, or concealed himself to avoid detection or punishment for any offence; but it is not necessary that the United States should have known that he was the offender. *Ibid.*
78. Limitation may be given in evidence by the defendant, under the general issue in a criminal case; and the United States may give, in evidence, the fact that the defendant fled from justice, and, therefore, was not entitled to the benefit of the limitation. *Ibid.*
79. See EVIDENCE, 538. *United States* v. *Richard H. White*, v. 116.
80. The defendant, in a prosecution for a misdemeanor, is not entitled to the benefit of the limitation in the Act of Congress of April 30, 1790, § 31, if, within the two years he fled from justice, although he should, within the two years, have returned openly to the place where the offence was committed, so that, with ordinary diligence and due means, he might have been arrested. If, within two years after the commission of the offence, the defendant left the district in which it was committed, with the intent to avoid detection or punishment for that offence, he was "a person fleeing from justice," although he might, at various other periods, have been arrested in the United States. *Ibid.*
81. The defendant had pleaded the statute of limitations in due time; and had also demurred to the whole declaration; the Court permitted him to withdraw his demurrer, and let the plea of limitations remain. *Suckley* v. *Slade*, v. 123.
82. See DEMURRER, 31. *United States* v. *Richard H. White*, v. 368.
83. Not guilty, within three years, is a good plea in trover. *Barnard* v. *Tayloe*, v. 403.
84. The county of Alexandria, D. C., is not "beyond seas," as to the county of Washington, in the same district. *Bank of Alexandria* v. *Dyer*, v. 403.
85. See ADMINISTRATION, 47. *Lupton* v. *Janney*, v. 474.
86. An acknowledgment of a claim is not sufficient to take a case out of the statute of limitations. *Archer* v. *Poor*, v. 542.
87. *Non assumpsit* within five years, is not a good plea to an action of assumpsit upon a promise to collect money and account for it. *Gardner* v. *Peyton*, v. 561.
88. A person in Alexandria county, D. C., is not "beyond seas," within the meaning of the act of limitations, in regard to persons residing in Washington county. The residence of the defendant in Alexandria county, may, therefore, be added to the time of his residence in Washington county, so as to enable him to plead to an action upon a bond, in Washington county, the Maryland statute of limitations of "twelve years standing." *Suckley* v. *Slade*, v. 617.

LOTTERY.
1. It was not lawful, in 1812, in the District of Columbia, to sell tickets in the Potomac and Shenandoah Navigation Lottery; although the lottery was authorized by an act of the Legislature of Maryland, passed in 1809; and

LOTTERY, (*continued.*)
a note given for the purchase of such tickets, in 1812, being given for an unlawful consideration, was void. *Thompson* v. *Milligan*, ii. 207.
2. See CORPORATION OF WASHINGTON, 7. *Clark* v. *Corporation of Washington*, ii. 502.
3. The holders of tickets in the Washington lottery had no right to sue the managers upon their bond to the Corporation of Washington, without the leave of the corporation; nor to sue the contractor for the lottery, on his bond given to the managers without their consent. *Brent* v. *Davis*, ii. 632.
4. The plaintiff cannot maintain an action upon a note given for the purchase of a ticket in a lottery prohibited by law. A lottery for the sale of lots or lands, is within the prohibition of the Maryland Act of 1793, c. 58. *Hawkins* v. *Cox & Smith*, ii. 173.
5. See CORPORATION OF WASHINGTON, 12. *Shankland* v. *Corporation of Washington*, iii. 328.
6. *Id.* 14, 15. *Mc Cue* v. *Corporation of Washington*, iii. 639.
7. See EQUITY, 134. *Smith* v. *Chesapeake and Ohio Canal Co.* v. 563.
8. See CORPORATION OF WASHINGTON, 41. *France* v. *Corporation of Washington*, v. 667.

LUNATIC.
The Court will appoint a committee here to take care of the property of a person found lunatic in Maryland. The mode of ascertaining lunacy, is by a writ *de lunatico inquirendo*. *Burke* v. *Wheaton*, iii. 341.

LUTHERAN CHURCH.
Although a dedication of a lot to pious uses may be too vague an appointment to be carried into effect, in a Court of Equity, upon general principles; yet, if it has been long occupied for those uses, with the knowledge and consent of the donor, his heirs may be perpetually injoined from disturbing the possession. *Kurtz et al.* v. *Beatty et al.* ii. 699.

MALICIOUS PROSECUTION.
In an action upon the case for a malicious prosecution, the defendant may, upon the general issue, show probable cause for the prosecution. *Sheehee* v. *Resler*, i. 42.

MANDAMUS.
1. If the right of the party applying for a mandamus be not clear, or if he has an adequate legal remedy, the Court will not grant the mandamus. *Marine Ins. Co.* v. *Bank of Alexandria*, i. 7.
2. A writ of mandamus is the proper process to compel the Corporation of Washington to pay to the county treasurer one half of the expense of erecting a bridge over Rock Creek, according to the Act of Congress of July 1, 1812, § 11. *United States* v. *Corporation of Washington*, ii. 174.
3. See APPEAL, 4. *Deneale's Executor* v. *Young*, ii. 200.
4. A writ of error to the judgment of the Circuit Court of the District of Columbia, awarding a peremptory mandamus, is a supersedeas; and if the peremptory mandamus be issued after the filing of the writ of error, and within ten days after the rendition of the judgment, it will be quashed. *United States* v. *Columbian Ins. Co.* ii. 266.
5. See CORPORATION OF WASHINGTON, 5. *United States* v. *Carberry*, ii. 358.
6. See EXECUTIVE OFFICERS, 1 to 8. *United States* v. *Kendall, Postmaster-General*, v. 163.
7. See ATTACHMENT, 96. *Id.* 385.

MANDATE.

See ATTACHMENT, 109. *White* v. *Clarke et al.* v. 530.

MANSLAUGHTER.

1. In manslaughter, a peremptory challenge is allowed in Virginia. *United States* v. *McLaughlin*, i. 444.
2. Upon a conviction of manslaughter at common law, the Court will give judgment of fine and imprisonment under the Act of Congress of April 30, 1790, § 7. *Ibid.*
3. See CHALLENGE, 15. *United States* v. *Craig*, ii. 36.
4. A slave convicted of manslaughter in Alexandria, D. C., may be punished by burning in the hand and whipping. *United States* v. *Negro Tom*, ii. 114; *United States* v. *Clark*, ii. 620.
5. If the tenant kill the constable, who comes to make an unlawful distress for rent, the jury may, according to the circumstances of the case, find their verdict for manslaughter. *United States* v. *Elizabeth Williams*, ii. 438.
6. In 1827, manslaughter in the District of Columbia was punished by fine and imprisonment. *United States* v. *Anderson*, iii. 205.
7. See INDICTMENT, 90, 91, 92. *United States* v. *Henry Frye, a Slave*, iv. 539.

MANUMISSION.

1. A sale of a slave upon an express condition that he should be free at the end of six years, is not a manumission under the Maryland Act of 1796, c. 67. *Negro Fidelio* v. *Dermott*, i. 405.
2. A manumission by will, is not in prejudice of creditors if the real and personal estate are sufficient without the value of the manumitted slave to pay all the debts of the testator. *Ibid.*
3. A manumission by will, after a term of years, is not revoked by a codicil ordering a sale of all the testator's slaves, if, at the time of making the codicil, their term of service had not expired. *Ibid.*
4. See EVIDENCE, 253. *United States* v. *Negro Jacob Bruce*, ii. 95.
5. See FREEDOM, 31. *Negro Jo. Thompson* v. *Clarke*, ii. 145.
6. *Id.* 32. *Negro Sarah* v. *Taylor*, ii. 155.
7. *Id.* 48. *Negro Alice* v. *Mortè*, ii. 485.
8. Constructive manumission by will. *Quando* v. *Clagett*, iv. 17.
9. See EVIDENCE, 526. *Negro Emanuel* v. *Ward*, iv. 171.
10. See FREEDOM, 73. *Negro Kitty* v. *McPherson*, iv. 172.
11. *Id.* 76, 77. *Negro Samuel* v. *Child et al.* iv. 189.
12. A testatrix charged her lands as well as her personal estate with the payment of her debts and legacies, and, by her will manumitted certain of her slaves, to take effect at her death. The personal assets were not sufficient without the slaves, but with the real estate, were more than sufficient to pay the debts; *held*, that such manumission was not "in prejudice of creditors," and that the slaves were entitled to their freedom. *Negro Eliza and Kitty Chapman* v. *Fenwick*, iv. 431.
13. If the manumission be considered as a specific legacy, the assent of the executor was given by suffering the negroes to go at large, as free, for the period of eight years after the death of the testatrix. *Ibid.*
14. If there be a fund for the payment of debts and pecuniary legacies, the executor may be compelled to assent to a specific legacy. *Ibid.*
15. A specific legacy shall not abate, or contribute, if there be enough without it. *Ibid.*
16. A devise of real estate "after payment of debts," is a charge of the debts upon the real estate. *Ibid.*
17. An assent to a legacy cannot be revoked. *Ibid.*
18. Emancipation by will, stands on stronger grounds than a specific legacy, and does not need the assent of the executor. *Ibid.*

MANUMISSION, (*continued.*)
19. The burden of proof lies on the creditors to show that an emancipation by will is "in prejudice of creditors." *Ibid.*

MARINER.
1. An owner of a slave may hire him as a mariner to the master of a vessel for a foreign voyage, and may authorize his slave to sign the shipping articles, and will be bound thereby; and the wages will be forfeited by any act of the slave which would forfeit his wages if he were a free man; but his wages are not forfeited by his quitting the vessel after the voyage was ended, and before the cargo was discharged. *Slacum* v. *Smith*, ii. 149.
2. If goods are lost from the ship by the negligence of the mate, he cannot recover his wages; but he is not liable for a mere mistake in returning to the master a bale more than was actually received. *Conner* v. *Levering*, ii. 163.

MARINE CORPS.
See APPRENTICE, 21, 22. *Ex parte William Brown*, v. 554.

MARITIME LAW.
The master of a steam ferry-boat is not liable for the wages of the hands. *Harris* v. *Nugent*, iii. 649.

MARRIAGE.
1. An indictment against a minister for joining in marriage persons under age, without the consent of their parents or guardians, contrary to the Act of Maryland, 1777, c. 12, § 9, must aver that the defendant was, at the time of solemnizing the marriage, a minister authorized and qualified to celebrate the rite of matrimony; it must, also, if it contain an averment that it was done without the consent of the parents, charge that there was then a parent living; and that there was no guardian who could consent, or that it was without the consent of the guardian, as well as without the consent of the parents. *United States* v. *McCormick*, i. 593.
2. See BIGAMY, 6. *United States* v. *Jernegan*, iv. 1.
3. *Id.* 7, 8, 9. *United States* v. *Jernegan*, iv. 118.

MARSHAL.
1. The marshal is entitled to a fee of ninety pounds of tobacco for impanelling a jury in a criminal prosecution. *United States* v. *McDonald*, i. 78.
2. The marshal's commission of five per cent. may be included in the replevin bond for rent. *Alexander* v. *Thomas*, i. 92.
3. The marshal may include his commission in the forthcoming bond; and is also entitled to his commission upon an execution on the bond. *Thomas* v. *Brent*, i. 161.
4. If the plaintiff has received the debt and costs, the marshal cannot detain the defendant on a *ca. sa.* for his poundage. *Causin* v. *Chubb*, i. 267.
5. An attachment from this Court for a witness in Virginia is to be served and returned by the marshal of Virginia. *Voss* v. *Luke*, i. 331.
6. The Court will not order the defendant's appearance to be stricken out so as to charge the marshal. *Wood* v. *Dixon*, i. 401.
7. The marshal is entitled to a fee of $5.50 for summoning and impanelling a coroner's inquest in the county of Alexandria. *Brent* v. *Justices of the Peace*, i. 434.
8. A prison-bounds bond may be assigned by a deputy-marshal in Alexandria county. *Scott* v. *Wise*, i. 473.
9. The marshal is liable if he suffer a debtor in execution to escape, although the debtor return into custody, and the marshal have him at the return of the *ca. sa.* *United States* v. *Brent*, i. 525.

MARSHAL, (*continued.*)
10. The Court will not, on motion, discharge a prisoner for debt who has the benefit of the prison bounds, because the creditor refuses to pay the daily allowance. *Ex parte William Wilson*, ii. 7.
11. See INSOLVENT, 21. *Knox et al.* v. *Summers et al.* ii. 12.
12. The marshal may justify appearance-bail at the second term after exceptions taken at the rules. *Quære?* *Brent* v. *Brashears*, ii. 59.
13. See AMERCEMENT, 2. *Williams* v. *Craven*, ii. 60.
14. See BAIL, 63. *Heyer et al.* v. *Wilson*, ii. 369.
15. See ASSIGNMENT, 12. *Ibid.*
16. A defendant committed in execution on a *ca. sa.* is liable to the marshal for his poundage, which may be recovered in an action of *assumpsit*. *Ringgold* v. *Glover*, ii. 427.
17. See FREEDOM, 49. *Rebecca* v. *Pumphrey*, ii. 514.
18. See AMERCEMENT, 3. *Winter* v. *Simonton*, ii. 585.
19. The marshal is bound to take sufficient appearance-bail in all cases, (except, &c.) and he is the judge of the sufficiency. *Poe* v. *Mounger*, i. 145; *Bennett* v. *Pendleton*, i. 146.
20. See INSOLVENT, 54. *United States* v. *Smith*, iii. 66.
21. See ADMINISTRATION, 29. *Ex parte Ringgold*, iii. 86.
22. See ATTACHMENT, 81. *Ringgold* v. *Lewis*, iii. 367.
23. The plaintiff in a *ca. sa.* is liable to the marshal for his poundage, as soon as he has taken the body of the defendant in execution upon that writ. *Mason* v. *Muncaster*, iii. 403.
24. The plaintiff in a *fi. fa.* is also liable to the marshal for his whole poundage on the debt, if he levy goods to the value of the debt, whether they be sold or not. If sold, and they produce less than the debt, he can claim poundage only on the amount made. *Ibid.*
25. The original defendant is not liable, in any form of action, to the marshal, nor to the original plaintiff, for the poundage; nor is he or his property liable for poundage, unless the judgment be for a sum larger than the debt due by the defendant, to be released on payment of the amount really due with costs; for the marshal cannot, on a *fi. fa.*, make more than the amount of the judgment; nor can he detain the debtor upon a *ca. sa.* for more than that amount. *Ibid.*
26. If the marshal has not returned the *fi. fa.* he may proceed to execute it for his poundage. *Ibid.*
27. See ELECTION, 7. *Peyton* v. *Brent*, iii. 424.
28. See BAIL, 80. *Jackson* v. *Simonton*, iv. 12.
29. See COSTS, 48. *Ringgold* v. *Hoffman*, iv. 201.
30. See FEES, 20. *Swann* v. *Ringgold*, iv. 238.
31. See BOND, 17–21. *Jackson* v. *Simonton*, iv. 255.
32. See FREEDOM, 95. *Runaways*, iv. 489.
33. In case of riot, the marshal has a right to take the *posse* and to call on all citizens to aid him in arresting the rioters; and the citizens have a right to arm themselves. *United States* v. *Fenwick et al.* iv. 675.
34. See EXECUTION, 53. *United States* v. *Williams*, v. 400.
35. *Id.* 56. *Gaylor* v. *Dyer*, v. 461.
36. See ATTACHMENT, 105. *Allen* v. *Croghan*, v. 517.
37. See EXECUTION, 58. *Cunningham* v. *Offutt*, v. 524.
38. See AMENDMENT, 48. *Linthicum* v. *Remington*, v. 546.
39. See EXECUTION, 59. *Ibid.*
40. See ESCAPE, 2. *United States* v. *Williams*, v. 619.

MASTER AND SERVANT.
A servant selling liquor for his master without license, is not liable to the penalty. *United States* v. *Paxton*, i. 44.

MASTER OF VESSEL.

1. A master of a vessel is not liable to the penalty of the Act of Virginia for carrying a slave out of the Commonwealth, unless he did it knowingly. *Mc Call* v. *Eve*, i. 188.
2. By the Virginia law of January 25, 1798, § 6, 7, a master of a vessel is liable to the owner of a slave for his loss, if he take the slave out of the county of Alexandria, District of Columbia, without the written authority of his owner, or a compliance with the other requisites of the act.

A general hiring to the defendants for eleven months, without any limitation as to the nature or place of his employment, is not such a permission as the act requires, although the plaintiff knew that the defendant's occupation was that of a master of a vessel, and the slave was a seaman.

The person to whom the slave is hired is not the owner, within the meaning of the statute. *Park* v. *Willis*, ii. 83.

3. See LIEN, 15. *Vowel* v. *Bacon*, iv. 97.
4. See FISHING GROUND. *Mason* v. *Mansfield*, iv. 580.

MECHANICS' BANK OF ALEXANDRIA.

Under the charter of the Mechanics' Bank of Alexandria, it is not necessary that the eight directors who are to be practical mechanics, should be in actual practice at the time of the election. *Gray et al.* v. *Mechanics' Bank*, ii. 51.

MEDICAL SOCIETY.

1. A physician practising in Washington, D. C., without a license from "the medical society of the District of Columbia," may maintain an action at law for his services, if, during the time of those services there was no existing "medical board of examiners of the District of Columbia." *Woodside* v. *Baldwin*, iv. 174.
2. In a prosecution for practising in the medical art, and receiving payment therefor, in the District of Columbia, without having first obtained a license from the medical board of examiners of that district, or producing a diploma, the Court will not compel a witness to produce the medicine which he received from the defendant. In such a prosecution, the Court will not permit the United States to examine as to any specific instances, of which previous notice has not been given. *United States* v. *John Williams*, v. 62.
3. The application, by an oculist, of liquid to the eyes, is not the practice of medicine, but rather of surgery. *Ibid.*
4. In such a prosecution, it is competent for the defendant to show that the charter is vacated by nonuser; and that there was no board of examiners *de jure*.

A board of examiners not elected or continued in being by filling up vacancies, but elected annually, is not a legal board. *Ibid.*

5. It is incumbent on the United States to show that the medical society had a corporate existence at the time when, &c., that the board of examiners was originally elected by at least seven members of the society; and that the officers were duly appointed, and that if the minutes of the proceedings of the society were lost, the United States must prove their contents, and show that, at the time when, &c. there was a competent board of examiners *de jure*. *Ibid.*
6. An information in the nature of a writ of *quo warranto* will not be issued at the suit of an individual alone, to try the validity of a private corporation; but upon an indictment for a violation of the charter, the defendant may show that the charter was vacated. *Ibid.*
7. See LICENSE, 6. *Ibid.*

MEMBER OF CONGRESS.

See ASSAULT AND BATTERY, 13. *United States* v. *Houston*, iv. 261.

MILITIA.

1. A justice of the peace of the District of Columbia is not an officer, judicial or executive, of the United States, and is liable to militia-duty. *Wise* v. *Withers*, i. 262.
2. Judgment upon ten days' notice cannot be given upon the bond of a collector of militia-fines. *Enoch Spaulding's case*, i. 387.
3. A warrant officer of the navy is exempt from militia-duty. *Sanford* v. *Boyd*, ii. 78.
4. See IMPRESSMENT. *Jacobs* v. *Levering*, ii. 117.
5. In an action of trespass against the marshal of the District of Columbia, for levying a distress for a militia-fine, it is only necessary for him, in his justification, to prove those facts which give jurisdiction to the military court, and that it was regularly constituted, and imposed the fine. The acts of such a court are presumed to be correct, and it is not competent for the plaintiff to show their irregularity. *Slade* v. *Minor*, ii. 139.
6. An alien is not liable to militia duty. *Ibid.*
7. The clerks employed in the offices of the several departments of the government of the United States are not liable to militia-duty. *Ex parte W. S. Smith*, ii. 693.
8. In order to justify the marshal for arresting a man upon a militia-fine, it is not necessary that the list of fines should have been delivered to him by the clerk of the court-martial within fifteen days after the session of the appellate court, as required by the 4th § of the Militia Act of the District of Columbia. *Ryan* v. *Ringgold*, iii. 5.

MILL.

See EVIDENCE, 482. *Pierson* v. *Elgar*, iv. 454.

MISDEMEANOR.

1. The want of the name of a prosecutor at the foot of the indictment for a misdemeanor is no ground for arresting the judgment. *United States* v. *Jamesson*, i. 62.
2. A *capias* is the proper process upon indictment for misdemeanor. *Ibid.*
3. Misdemeanors in Alexandria County, are not to be tried until the term next after that to which the *capias* shall have been returned executed. *General Rule*, i. 122.
4. The name of a prosecutor must be written at the foot of an indictment for keeping a bawdy-house. *United States* v. *Mary Rawlinson*, i. 83.
5. Upon a conviction for disturbing a religious congregation in Alexandria County, the punishment is fine and imprisonment, to be assessed by the jury. *United States* v. *Aubrey*, i. 185.
6. It is no ground of general demurrer to an indictment for misdemeanor under the laws of Virginia of 1792 and 1795, that the name of a prosecutor is not written at the foot of the indictment. *United States* v. *Sanford*, i. 323.
7. Upon a recognizance for the appearance of the defendant in a case of misdemeanor, he is bound to appear on the first day of the term. *United States* v. *Hodgkin*, i. 510.
8. In cases of misdemeanor, the Court, in Alexandria, will not compel the traverser to plead to the indictment until a prosecutor's name be written thereon; and the recognizance will be respited, unless the attorney of the United States shall satisfy the Court that it is a case which ought to be excepted out of the general rule. *United States* v. *Carr*, ii. 439.
9. See INDICTMENT, 56. *United States* v. *Helriggle*, iii. 179.
10. The name of a prosecutor must be written at the foot of every indictment for a misdemeanor in Alexandria County, before it be sent to the Grand Jury, unless it be founded upon a presentment made upon the knowledge of two of the Grand Jury, or upon the testimony of a witness called upon by the Court or the Grand Jury. *United States* v. *Shackelford*, iii. 287.

MISDEMEANOR, (*continued.*)
11. See FELONY, 7. *United States* v. *Larned*, iv. 335.
12. See FORGERY, 21. *Ibid.*
13. It is a misdemeanor at common law to persuade, instigate, and excite another to commit assault and battery. *United States* v. *Lyles*, iv. 469.
14. See CRUELTY, 3. *United States* v. *R. B. Lloyd*, iv. 470.
15. See BAIL, 88. *United States* v. *Milburn*, iv. 478.
16. See INDICTMENT, 98, 99. *United States* v. *Henning*, iv. 608.

MISNOMER.
1. After plea of misnomer in abatement, the Court will not suffer the record to be amended but upon payment of costs, and a discharge of the bail. *Payen* v. *Hodgson*, i. 508.
2. A mistake of the clerk in misnaming one of the parties, in the commission to take the deposition of a witness, may be amended by the order to issue the commissions in case of the death of the witness before the trial. *Boone* v. *Janney*, ii. 312.
3. *Quære*, whether the misnomer of a corporation aggregate must be pleaded in abatement. *Central Bank* v. *Tayloe*, ii. 427.
4. See LIMITATION, 38. *Bank of Columbia* v. *Jones*, ii. 516.
5. The title of the cause, written on the margin of a plea, is no part of the plea, but is only an intimation to the clerk in what cause he is to enter the plea; and a mistake of the name of one of the parties in the cause, made in the marginal title, is not fatal to the plea, even on special demurrer. *Bank of Columbia* v. *Ott's Administrator*, ii. 529.
6. See ABATEMENT, 9. *Brooklyn White Lead Co.* v. *Pierce*, iv. 531.

MISTAKE.
1. The acceptor of a bill of exchange given for the amount of an award, cannot avail himself of the mistake of the arbitrators in making up their award. *Miller* v. *Butler*, i. 470.
2. A purchaser of a vessel who has paid the expenses and disbursements of a previous voyage, upon the order of the master, cannot recover them from the master, although he paid them under a mistaken expectation that he was to be reimbursed out of the freight. *Hodgson* v. *Butts*, i. 488.
3. A mistake of the law is not a ground of relief in equity where no fraud is charged. *Robinson* v. *Cathcart*, ii. 590.
4. See CONTRACT, 33. *Chesapeake and Ohio Canal Company* v. *Dulany*, iv. 85.
5. See EVIDENCE, 448. *Beal* v. *Dick et al.* iv. 18.

MONEY.
1. Judgment for sterling money; Irish sterling. *Bond* v. *Grace*, i. 96.
2. Upon a deed made in 1779, reserving an annual rent of £26 current money of Virginia forever, the rents accruing during the existence of paper money are to be reduced according to the scale of depreciation. *Marsteller* v. *Faw*, i. 117.
3. The delivery of counterfeit money by the defendant to a person to be passed off, generally, for the benefit of the defendant, is not a passing "in payment" within the Virginia Act of December 19th, 1792. *United States* v. *Venable*, i. 416.

MORTGAGE.
1. In a suit between contending mortgagees the mortgagor is a competent witness for the first mortgagee to identify the goods described in the first mortgage. *Wagner* v. *Watts*, ii. 169.
2. A mortgage, of "the whole of my stock of books and stationery now remaining in my possession, and also such additions thereto as I may hereafter make, from time to time, to the same," is not void for uncertainty; but conveys only the stock on hand at the date of the mortgage. *Ibid.*

MORTGAGE, (*continued.*)
3. See ELECTION, 8. *Vowell* v. *Thompson*, iii. 428.
4. See EQUITY, 90, 91. *Oliver* v. *Decatur*, iv. 458.

MULATTO.
See BY-LAW, 33, 34, 35. *Ex parte Thomas Williams*, iv. 343.

MURDER.
1. Dying declarations are evidence. *United States* v. *McGurk*, i. 71.
2. See EVIDENCE, 472, 473. *United States* v. *Taylor*, iv. 338.
3. See JURY, 29. *United States* v. *McMahon*, iv. 573.
4. See EVIDENCE, 500, 501. *Ibid.*
5. See BURGLARY, 2. *United States* v. *Bowen*, iv. 604.
6. See EVIDENCE, 488–493. *United States* v. *Woods*, iv. 484.

NATURALIZATION.
1. A deposition, in 1802, that the deponents have known the applicant "since the year 1793, in New York," is not evidence that he was residing in the United States before the 29th of January, 1795. *Ex parte Tucker*, i. 89.
2. Five years continued residence was necessary under the Act of April, 1802. *Ex parte Walton*, i. 186; *Ex parte Saunderson*, i. 219.
3. A foreign mariner residing in Alexandria five years, but occasionally, during that time, sailing from that port in American vessels, may be naturalized. *Ex parte Pasqualt*, i. 243.
4. A *feme covert* may be naturalized. *Marianne Pic's case*, i. 372.
5. Naturalization cannot be proved by parol. *Slade* v. *Minor*, ii. 139.
6. See ALIENAGE, 6, 7, *Matthews* v. *Rae et al.* iii. 699.

NE EXEAT.
1. If the sureties of an administratrix reside out of the district, a *ne exeat* will be granted to restrain her from moving away with the goods before final settlement of her administration account, but it will not be granted against her sureties. *Patterson* v. *McLaughlin*, i. 352.
2. In Alexandria county a *ne exeat* will not lie to restrain a garnishee from going out of the District of Columbia. *Patterson* v. *Bowie et al.* i. 425.
3. In an action for maliciously holding the plaintiff to bail upon a *ne exeat* for a larger sum than was due, the Court will grant a new trial, if the verdict be against the weight of the evidence. *Zantzinger* v. *Weightman et al.* ii. 478.
4. In granting a new trial, the Court will make it a condition that the verdict shall stand until another shall be rendered. *Ibid.*
5. In an action for maliciously holding the plaintiff to bail upon a *ne exeat*, the plaintiff may give evidence that he has suffered in the public estimation in consequence of the process of *ne exeat*, but not in consequence of reports circulated by the defendant, though such reports may be given in evidence by the plaintiff to show malice in the defendants; nor can he give evidence of special damage not averred in the declaration. The plaintiff, in such an action must show both malice and the want of probable cause and that the defendants knew that they had not probable cause. The bill and affidavit, and the order of the judge granting the *ne exeat*, are *primâ facie* evidence of probable cause. *Ibid.*
6. A *ne exeat-bond* only binds the sureties to the extent of the final decree of the Court; and if the plaintiff continually remain in the district, according to the condition of the bond, they will be discharged altogether. *Ibid.*
7. The declaration, in such an action, must aver the want of probable cause; and for the want of such an averment the judgment will be arrested. *Ibid.*

NEGLIGENCE.

1. Upon a count charging negligence of the defendant and his servants, it is sufficient to prove negligence of the servant. *Dobbin* v. *Foyles*, ii. 65.
2. A count for injuring the plaintiff's mare by negligence, and a count upon a promise to return the mare safe, may be joined; and advantage can only be taken of the misjoinder, if it be one, by special demurrer. *Ibid.*
3. The surety in an official bond conditioned that the principal shall "faithfully" execute the duties of his office, is not liable for honest error of judgment, or want of skill, of the principal; but gross negligence is want of fidelity. *Common Council of Alexandria* v. *Corse*, ii. 363.
4. The owners of a stage coach are liable for the negligence of their agent in suffering the plaintiff's slave to be taken away in their coach; but not if the agent has used all the diligence necessary and usual in like cases. *Lowe* v. *Stockton et al.* iv. 537.
5. In an action on the case for negligence of the defendant's driver in running against the plaintiff's stage-coach, the plaintiff's driver is not a competent witness for the plaintiff without their release.

   A release, under the seal of one of the copartners is a sufficient release of a joint cause of action. *Beltzhoover et al.* v. *Stockton et al.* iv. 695.
6. For negligence of an agent the principal only is liable. It is negligence to suffer a slave to go off in the coach upon a false certificate of freedom. The owners only are liable. *Mandeville* v. *Cokendorfer*, iii. 397.

NEGRO.

1. A free negro is a competent witness against a free white man. *Quære? United States* v. *Fisher*, i. 244.
2. Free-born negroes, not subject to any term of servitude by law, are competent witnesses in all cases. Color alone is no objection to a witness. *United States* v. *Mullany*, i. 517.
3. A slave is not a competent witness against a free-born mulatto, not subject to any term of servitude by law. *United States* v. *Peggy Hill*, i. 521.
4. The affidavit of a manumitted negro is sufficient ground for an order to issue a summons returnable immediately, upon a petition for freedom. *Negro Nan* v. *Moxley*, i. 523.

NEW TRIAL.

1. Misbehavior of jurors is not a ground for a new trial, if it has not affected the verdict. *Henry* v. *Ricketts et al.* i. 545.
2. The refusal of a new trial is not error. *Ibid.*
3. A new trial will not be granted on affidavit that the plaintiff has since discovered testimony to discredit a witness who was examined at the trial, if that witness was the only witness to the point on which he testified. *Brooke* v. *Peyton*, i. 128.
4. A new trial will not be granted because the verdict is against the weight of evidence if substantial justice has been done. *Johnston* v. *Harris*, i. 257.
5. Information given by one juror to the others after they have retired, is not sufficient ground for a new trial if the verdict has done substantial justice between the parties. *Cherry* v. *Sweeny*, i. 530.
6. The Court will not lend an easy ear to affidavits of jurors as to their proceedings after they have retired. *Ibid.*
7. If the jury take out the coroner's inquest and depositions, and find the defendant guilty of murder, a new trial will be granted. *United States* v. *Michael Clarke*, ii. 152.
8. In cases of *tort*, courts have seldom granted new trials on the ground of excessive damages, unless they were so excessive as to imply gross partiality or corruption on the part of the jury. *Swann* v. *Bowie*, ii. 221.
9. If, at the trial, all objections to a deposition are waived, and a new trial be

NEW TRIAL, (*continued.*)
granted, the Court will not suffer objections to be made to the same deposition upon the new trial. *Edmondson* v. *Barrell*, ii. 228.
10. A motion in arrest of judgment and for a new trial may be made at the same time, but the motion in arrest will be first heard. *Turner* v. *Foxall*, ii. 324.
11. A motion for a new trial, or in arrest of judgment, is a waiver of the benefit of a stay of execution agreed upon by the parties. *Brent* v. *Coyle*, ii. 348.
12. See BILLS AND NOTES, 166. *Coote* v. *Bank of the United States*. iii. 95.
13. If the jury take out the plaintiff's account without the consent of the defendant, the Court will grant a new trial. *Hutchinson* v. *Decatur*, iii. 291.
14. See JURY, 58. *Orme* v. *Pratt*, iv. 124.
15. There is no rule, or practice, which forbids the Court to grant a new trial where the verdict is against the weight of evidence. A motion for a new trial is an application to the sound legal discretion of the Court. *Lloyd* v. *Scott*, iv. 206.
16. See JOINT DEFENDANTS, 15. *United States* v. *Campbell, et al.* iv. 658.
17. See COSTS, 50. *Howe* v. *McDermott*, iv. 711.
18. See JUDGMENT, 101. *United States* v. *Hastings*, v. 115.
19. See JURY, 75. *Simms* v. *Templeman*, v. 163.

NIL DEBET.
Nil debet is not a good plea, in the District of Columbia, to the judgment of a State court in Kentucky; but the defendant may, with the leave of the court, and upon terms, withdraw it, and plead *nul tiel record*. *Short* v. *Wilkinson*, ii. 22.

NOLLE PROSEQUI.
1. A *nolle prosequi*, without the consent of the defendant, after the jury has been sworn, is equivalent to an acquittal, and may be so pleaded. *United States* v. *Furring*, iv. 465.
2. See COVENANT, 7. *Kurtz* v. *Becker*, v. 671.

NOTARY.
See BILLS AND NOTES, 208. *Whitney* v. *Huntt*, v. 120.

NOTICE.
1. One hour's notice to the attorney at law of the opposite party, of the time and place of taking a deposition, when the party lives in the same village or town, is reasonable, unless special circumstances should render it unreasonable. *Leiper* v. *Bickley*, i. 29.
2. The affidavit of service of notice, by leaving it with the defendant's wife, need not state that she was informed of the purport of the notice. *McCall* v. *Towers*, i. 41.
3. Notice, given to the attorney at law, of a motion for a *dedimus*, is sufficient. *Potts* v. *Skinner*, i. 57.
4. An hour's notice of taking a deposition in Alexandria is sufficient. *Nicholls* v. *White*, i. 58.
5. Where there are two joint indorsers, notice must be given to both. *Gantt* v. *Jones*, i. 210.
6. Notice to the indorser is necessary, unless he knew that the maker was insolvent at the time of his indorsement. *Morris* v. *Gardner*, i. 213.
7. Where the parties live within two miles of each other, nine days' delay is fatal. *Ibid.*
8. Reasonableness of notice is to be left to the jury. *Cox* v. *Simms*, i. 238.
9. One day's notice, to the attorney at law, is sufficient to take the deposition of a seafaring man, under the Maryland law of 1721, c. 14, § 3; but it

NOTICE, (*continued.*)
cannot be read unless the witness has gone from the district. *Bowie* v. *Talbot*, i. 247.
10. The Court, at an adjourned session, will not hear a motion to dissolve an injunction, upon notice given after the first session of the term. *Burford* v. *Ringgold*, i. 253.
11. Notice, of motion to dissolve an injunction, given on the first day of the term, is notice that the motion is to be made at the next succeeding term. *Ramsay* v. *Wilson*, i. 304.
12. It is necessary that the holder of a foreign bill of exchange, protested for non-acceptance, should give notice of the protest as soon as possible, under all the circumstances, according to the usual course of communication. *Lindenburger* v. *Wilson*, i. 340.
13. Under the Virginia laws respecting the taking of depositions, notice to the attorney at law is not sufficient. *Wheaton* v. *Love*, i. 429.
14. In an action against a surety in a bond to perform a decree, it is not necessary that notice of the decree should have been given to the principal. *White* v. *Swift*, i. 442.
15. Notice, to produce a book of accounts, given on the preceding evening, is sufficient when the counting-house of the party is near the court-house. *Shreve* v. *Dulany*, i. 499.
16. In the time of war, duplicate notices of protest of a bill of exchange should be sent. *Phillips* v. *Janney*, i. 502.
17. Two hours' notice of taking a deposition in Alexandria, where all the parties resided, was too short. *Jamieson* v. *Willis*, i. 566.
18. Notice of a motion for a *dedimus* to take depositions in a foreign country may be given to the attorney at law. *Irving* v. *Sutton*, i. 575.
19. See DEPOSITION, 57. *Barrell* v. *Limington*, iv. 70.
20. See CHESAPEAKE AND OHIO CANAL COMPANY, 10. *Chesapeake and Ohio Canal Co.* v. *Union Bank*, iv. 75.
21. See DEPOSITION, 58. *Atkinson* v. *Glenn*, iv. 134.
22. See BILLS AND NOTES, 190. *Bank of Alexandria* v. *Swann*, iv. 136.
23. A notice cannot be served on Sunday. *Chesapeake and Ohio Canal Co.* v. *Bradley*, iv. 193.
24. See GUARANTY, 2. *Dobbins et al.* v. *Bradley*, iv. 298.
25. The ten days' notice required by the Act of Congress of March 1, 1823, § 7, was for the benefit of the appellant, not of the appellee. *Corporation of Washington* v. *Eaton*, iv. 352.
26. See EJECTMENT, 14. *Waters* v. *Butler*, iv. 371.
27. See BILLS AND NOTES, 201. *Bank of the United States* v. *Watterston*, iv. 445.
28. EVIDENCE, 499. *Bank of the United States* v. *Davis*, iv. 533.
29. See CORPORATION OF GEORGETOWN, 2. *Wright* v. *Corporation of Georgetown*, iv. 534.
30. See EQUITY, 94. *Caldwell* v. *Walters*, iv. 577.
31. See ATTACHMENT, 90. *Davidson* v. *Donovan*, iv. 578.
32. See BALTIMORE AND OHIO RAILROAD COMPANY, 4. *Baltimore and Ohio Railroad Co.* v. *Van Ness*, iv. 595.
33. See BILLS AND NOTES, 202. *Bank of the United States* v. *Macdonald*, iv. 624.
34. *Id.* 208. *Whitney* v. *Huntt*, v. 120.
35. See EJECTMENT, 14. *Worthington* v. *Etcheson*, v. 302.
36. *Id.* 19. *Costigan* v. *Wood*, v. 507.
37. See DEPOSITION, 63. *Young* v. *Davidson*, v. 515.
38. See EQUITY, 138. *Walker* v. *Parker*, v. 639.

NUISANCE.
1. A public gaming-house is a common nuisance at common law. *United States* v. *Ismenard*, i. 150.

NUISANCE (*continued.*)
2. See DISORDERLY HOUSE, 7. *United States* v. *Dixon*, iv. 107.
3. See BRICKS, 2, 3, 4, 5. *Ward* v. *Corporation of Washington*, iv. 232.
4. See CRUELTY, 4 *United States* v. *Jackson*, iv. 483.
5. See DISORDERLY HOUSE, 13. *United States* v. *Elder*, iv. 507.
6. See CRUELTY, 5. *United States* v. *Cross*, iv. 603.

OATH.
1. A juror cannot be permitted to affirm instead of taking the usual oath, unless he is one of those people who hold it unlawful to take an oath on any occasion. *Wilson Bryan's case*, i. 151.
2. A juror may be sworn with uplifted hand, instead of touching the Evangels. *Ibid.*
3. The oath required by the Virginia law of December 17, 1792, § 4, is of no avail unless taken within sixty days after the removal of the party. *Lucy* v. *Slade*, i. 422.
4. A warrant of commitment should state probable cause, supported by oath or affirmation. *Ex parte Burford*, i. 276.
5. A promissory oath cannot be the subject of an indictment for perjury. *United States* v. *Glover*, iv. 190.

OFFICE JUDGMENT.
1. A special demurrer will not be admitted to set aside an office judgment. *Whetcroft* v. *Dunlop*, i. 5.
2. Special bail will not be required on setting aside an office judgment, unless appearance-bail was required. *Shean* v. *Towers*, i. 5.
3. A plea to the jurisdiction is a good plea in bar after an office judgment. *Smith* v. *Mc Cleod*, i. 43.
4. An office judgment may be set aside on the plea of "never executrix." *Alexander* v. *West*, i. 88.
5. Upon a motion to set aside an office judgment upon an injunction-bond, the Court will not suffer the defendant to plead that the obligee was dead at the time of the execution of the bond. *Porter* v. *Marsteller*, i. 129.
6. Office judgments rendered between the original session and an adjourned session of a term cannot be set aside at the adjourned session. *Memorandum*, i. 159.
7. When the office judgment is set aside by the defendant, the plaintiff may have the cause continued at the defendant's costs. *Mc Culloch* v. *Debutts*, i. 285.
8. In an action upon an auctioneer's bond, for not paying over to A. and B. money received for sales at auction; a rejoinder that it had not been established, by a judgment; that money was due to them by the auctioneer; is an issuable plea to set aside an office judgment. *Mayor and Commonalty of Alexandria* v. *Moore*, i. 440.
9. If defendant die after office judgment and writ of inquiry awarded, his administrator cannot plead "*plene administravit;*" nor any other plea which the original defendant himself could not have pleaded. *Janney* v. *Mandeville*, ii. 31.
10. See LIMITATION, 22. *Gregg* v. *Bontz*, ii. 115.
11. *Id.* 31. *Mechanics Bank* v. *Lynn*, ii. 246.

OFFICERS.
1. Officers of the Court cannot be bail without the leave of Court. *General Rule*, i. 246.
2. A justice of the peace in the District of Columbia, is not an officer of the United States, and therefore not exempt from militia duty. *Wise* v. *Withers*, i. 262.
3. It is not necessary that a peace-officer should have a warrant to justify him in suppressing an affray. *United States* v. *Pignel*, i. 310.

OFFICERS, (*continued.*)
4. It is to be presumed that a sworn officer has discharged his duty faithfully. *Dunlop* v. *Munroe*, i. 536.
5. A constable having a warrant to arrest a man for assault and battery, has a right to break open the door of the offender's dwelling-house to arrest him. *United States* v. *Faw*, i. 487.

OFFICIAL BOND.
1. In an official bond, the words "well and faithfully execute the office, and in all things relating to the same, well and faithfully behave," mean the same as the words "faithfully perform the trust reposed in them." *Bank of the United States* v. *Brent*, ii. 696.
2. Such a bond given by a teller of a bank is not void, because executed fourteen days after he had entered on the duties of his office. *Ibid.*

ORPHANS' COURT.
1. The register of the Orphans' Court in Alexandria, is entitled to the custody of the record books of wills, of the late Court of Hustings. *United States* v. *Deneale*, i. 34.
2. The Orphans' Court of Alexandria County cannot, in any case, grant letters testamentary without security, unless the testator's personal estate is sufficient to pay all his debts. *Ex parte E. J. Lee, Executor of Craik*, i. 394.
3. Upon attachment from the Orphans' Court, for contempt in not appearing to answer, &c., the marshal cannot detain the party after the return-day of the attachment, unless by an order of commitment by that Court. *Ex parte Burford*, i. 456.
4. An issue sent by the Orphans' Court to this Court, to try the validity of a will, cannot be removed to the other county, under the Act of Congress of June 24, 1812, § 8. *Carter* v. *Cutting*, ii. 58.
5. New evidence cannot be heard upon an appeal from the Orphans' Court. *Gittings* v. *Burch*, ii. 97.
6. See ADMINISTRATION, 23. *Nicholls* v. *Hodge*, ii. 582.
7. *Id.* 24. *Ibid.*
8. *Id.* 25. *Ibid.*
9. An executrix has a right to appeal from a sentence of the Orphans' Court to this court, without giving security to prosecute the appeal with effect, and the Court will grant a *mandamus* accordingly. *Deneale* v. *Young*, ii. 200.
10. When an issue is sent from the Orphans' Court to be tried in this court, and is accompanied by the libel and answer, they may be read in evidence upon the trial of the issue. *Evans* v. *Evans*, ii. 240.
11. See ADMINISTRATION, 29. *Ex parte Ringgold*, iii. 86.
12. See APPEAL, 19, 20, 21. *Mauro et al.* v. *Ritchie*, iii. 147.
13. See GUARDIAN, 6 – 18. *Ibid.*
14. *Id.* 15, 16. *United States* v. *Litle*, iii. 251.
15. *Id.* 20, 21. *Smoot* v. *Bell*, iii. 343.
16. See APPRENTICE, 10. *Charles* v. *Matlock*, iii. 230.
17. *Id.* 11. *May* v. *Bayne*, iii. 335.
18. The order of the Orphans' Court, charging the administratrix with the whole amount of inventory, did not change the ownership of the goods, so as to make her the owner thereof in her own right. *Smith* v. *Billing*, iii. 355.
19. See ADMINISTRATION, 33. *Wilson* v. *Rose*, iii. 371.
20. Upon an issue from the Orphans' Court *devisavit vel non*, the party contesting the will, has a right to open and close the argument to the jury. *Currico* v. *Kerby*, iii. 594.
21. See DEPOSITION, 54, 55. *Walsh* v. *Walsh*, iii. 651.
22. See GUARDIAN, 24. *United States* v. *Nicholls*, iv. 191.
23. See APPEAL, 23. *Tracy* v. *Scott*, iv. 250.

ORPHANS' COURT, (*continued.*)
24. See GUARDIAN, 25. *United States* v. *Nicholls*, iv. 290.
25. See APPRENTICE, 14. *Bell* v. *English*, iv. 332.
26. *Id.* 15. *Hines* v. *Hewitt*, iv. 471.
27. See ADMINISTRATION, 40. *Union Bank* v. *Smith*, iv. 509.
28. *Id.* 42. *Laird* v. *Dick*, iv. 666.
29. See APPENTICE, 17. *Gody* v. *Plant*, iv. 670.
30. *Id.* 18. *Smith* v. *Elwood*, iv. 670.
31. *Id.* 20. *Smith* v. *Elliot*, iv. 710.
32. See ADMINISTRATION, 44, 45. *Atkinson* v. *Robbins*, v. 312.
33. *Id.* 47 – 52. *Lupton* v. *Janney*, v. 474.
34. See APPEAL, 30. *Newton* v. *Carbery*, v. 626.
35. The Orphans' Court has no power to annex conditions to the payment of the dividend of a judgment at law recovered against the intestate for instalments due upon the stock of the Chesapeake and Ohio Canal Company. *Chesapeake and Ohio Canal Co.* v. *Johnson*, v. 643.

OYER.
1. Oyer of a judgment of a State Court will not be given unless prayed before the expiration of the rule to plead. *Cull* v. *Allen*, i. 45.
2. After plea, replication, rejoinder, and special demurrer, the defendant is not entitled to oyer of the plaintiff's letters of administration, nor to plead that the plaintiff is not administrator. *Grahame* v. *Cooke*, i. 116.
3. Although the plaintiffs name themselves administrators, yet if they have not made *profert* of their letters of administration, they are not bound to give oyer of them. *Mason's Administrators* v. *Lawrason*, i. 190.
4. After oyer prayed and demurrer by the defendant, the plaintiff is not bound to give oyer at a subsequent term. *Offutt* v. *Beatty*, i. 213.

PARCENERS.
1. If one of four parceners be an alien, the land descends to the other three. *Contee* v. *Godfrey*, i. 479.
2. A decree of partition does not pass anything from one coparcener to another. *Ibid.*

PARISH.
1. The vestry and wardens of the Protestant Episcopal Church of Alexandria, were the vestry of the Protestant Episcopal Church in the parish of Fairfax, in the ecclesiastical meaning of those words as modified by the laws and constitution of Virginia and the canons of the church. *Mason* v. *Muncaster*, ii. 274.
2. By the sale made under the decree in the case of *Taylor et al.* v. *Terrett et al.* the purchasers became privies to the church, and may avail themselves of the estoppel resulting from the warranty of Daniel Jennings the original grantor. *Ibid.*

PARTITION.
1. A decree of partition between heirs some of whom are aliens, does not estop those who are not aliens from claiming the whole in ejectment. *Contee* v. *Godfrey*, i. 479.
2. See PARCENERS, 2. *Ibid.*
3. See DESCENTS. *Tolmie* v. *Thompson*, iii. 123.
4. See EQUITY, 51, 52, 53. *Hastings* v. *Granberry*, iii. 319.
5. *Id.* 99 – 102. *Shaw* v. *Shaw*, iv. 715.
6. See CITY SURVEYOR. *Miller* v. *Elliot*, v. 543.

PARTNERSHIP.
1. In an action at law by one partner against another, the partnership-book

PARTNERSHIP, (*continued.*)
kept by the defendant is not evidence against the plaintiff, although it had been in his possession. *Sutton* v. *Mandeville*, i. 2.
2. In *assumpsit* for goods sold and delivered, the defendant may prove a partnership between the plaintiff and the witness, by the witness. *Lovejoy* v. *Wilson*, i. 102.
3. In an action for goods sold by "Tibbs & Company," the plaintiffs must prove themselves to be the firm of Tibbs & Company. *Tibbs et al.* v. *Parrott*, i. 313.
4. To support a plea in abatement for not naming all the joint promissors, it is not necessary for the defendant to prove that the plaintiff knew he was dealing with a copartnership. *Norwood* v. *Lutton*, i. 327.
5. If the goods sold belonged to a partnership at the time of the sale, the action must be brought in the name of all the partners, although the defendant was ignorant of the partnership. *Bennett* v. *Scott*, i. 339.
6. If the only resident member of a copartnership, who are plaintiffs, die pending the suit, the defendant may demand security for costs. *Lambert* v. *Smith*, i. 347.
7. If all the members of a partnership are not named as plaintiffs, the defendant may avail himself of the objection upon *non assumpsit*. *Carne et al.* v. *McLane*, i. 351.
8. It is not incumbent upon joint plaintiffs to prove that they are joint partners. *Woodward* v. *Sutton*, i. 351.
9. To prove a partnership, parol evidence cannot be given of the contents of printed cards; nor can general reputation of partnership. *Wilson* v. *Coleman et al.* i. 408.
10. Upon a joint shipment by three persons, the master is not liable to an action by two only, for breach of orders given by the three. *Young & Deblois* v. *Black*, i. 432.
11. After the dissolution of a partnership, one of the partners having authority to collect the debts may transfer to himself a debt due to the firm. *Oxley* v. *Willis*, i. 436.
12. Under the Virginia law, an action may be maintained upon a promissory note, against a secret partner who has not signed it. *Bank of Alexandria* v. *Mandeville*, i. 575.
13. A creditor of a firm is a competent witness to prove its existence. *Ibid.*
14. A secret partner is not liable, unless the money came to the use of the partnership. *Ibid.*
15. If one of two joint partners or contractors is sued alone, upon a joint contract, he must plead it in abatement, he cannot take advantage of it upon the general issue. *Clementson* v. *Beatty*, i. 178.
16. A copartnership is not chargeable for goods sold to one of the partners for his separate use, although he ordered them to be charged to the firm, if the vendor knew, at the time, that they were for the sole use of that partner. *Gullat et al.* v. *Tucker*, ii. 33.
17. The defendant cannot set off a separate debt of one partner against a partnership claim. *Lynn* v. *Hall*, ii. 52.
18. See EVIDENCE, 280. *Nicholson* v. *Patton*, ii. 164
19. See DEPOSITION, 28. *Garrett* v. *Woodward*, ii. 190.
20. In order to charge Robert upon a bill drawn by James in his own name, it is necessary to prove that James and Robert carried on business in partnership under the firm of James. *Primâ facie* it is the sole bill of James. *Nicholson* v. *Patton*, ii. 164.
21. See EVIDENCE, 340, 341. *Hutchinson* v. *Peyton*, ii. 365.
22. One partner cannot maintain an action at law against the other partner upon a partnership transaction, unless for a balance struck, and a promise to pay. *Goldsborough* v. *McWilliams*, ii. 401.

PARTNERSHIP, (*continued.*)
23. See CONSIDERATION, 4. *Rice* v. *Barry*, ii. 447.
24. See FRAUD, 24. *Ibid.*
25. See BILLS AND NOTES, 143 – 146. *Greatrake* v. *Brown*, ii. 541.
26. See ATTACHMENT, 64, 65, 66. *Averill* v. *Tucker et al.* ii. 544.
27. If the garnishee in an attachment under the Maryland Act of 1795, c. 56, is one only of the members of a mercantile firm indebted to the defendants, he cannot be chargeable alone as garnishee. *Ellicott* v. *Smith*, ii. 543.
28. Part owners of a ship are not joint partners. Each may maintain a separate action against the ship's husband for his proportion of the freight; and it is no objection that the ship's husband is one of the part owners. *Magruder* v. *Bowie & Kurtz*, ii. 577.
29. Upon the dissolution of a mercantile firm, if it be agreed that the acting partner shall take all the effects and pay all the debts of the firm, and this be known to the creditor of the firm, he cannot, with a good conscience, take a lien on the joint effects for new advances made by him to the acting partner on his own individual account, so as to exhaust the joint effects, and leave the retiring partner liable for the old joint debt. *McClean* v. *Miller*, ii. 620.
30. A written contract by one of two joint partners, made in his own name, does not bind the other, although the money obtained thereby is brought into the joint concern. *Smith* v. *Hoffman*, ii. 651.
31. See BANK, 11, 12. *Coote & Jones* v. *Bank of the United States*, iii. 50.
32. See BILLS AND NOTES, 166, 167, 168. *Id.* 95.
33. See ACCOUNT, 3, 4, 5, 6, 7. *Barry* v. *Barry*, iii. 120.
34. See EVIDENCE, 417, 418. *Patriotic Bank* v. *Coote*, iii. 169.
35. See EQUITY, 73. *Bartle* v. *Coleman*, iii. 283.
36. See AGREEMENT, 8. *Tingey* v. *Carroll et al.* iii. 693.
37. If there has been no settlement of the partnership accounts, one partner cannot maintain an action at law against the other for any matter relating to their partnership affairs. *Pote* v. *Phillips*, v. 154.
38. Although the partnership accounts may have been settled, and a balance acknowledged to be due by one partner to the other; yet the creditor-partner cannot maintain an action at law for that balance without proving an express promise by the debtor-partner to pay it. *Ibid.*
39. Where, during a long period of commercial intercourse between the principal and factor, it appeared that the principal was permitted, upon shipments of tobacco, to draw bills for the estimated value thereof, which bills the factor was in the habit of accepting and paying, whether the cargoes were, or were not, sold; and the factor being generally in advance, and charging interest upon his advances, and giving credit for interest upon the net proceeds of the cargoes; shipments made, after the dissolution of the firm of the principal, by the death of one of the partners, to the factor, (upon the credit of which shipments bills were drawn by the surviving partner, according to the usual course of their former dealing,) were held to have been made according to such usual course, and were not to be applied to the liquidation of the general debt due by the principal to the factor at the time of the dissolution; but were to be applied, in the first place, to meet the bills drawn upon the credit of such shipments; and the surplus only, if any, to be applied to the liquidation of the general balance due by the principal to the factor. But if the bills thus drawn by the surviving partner, and paid by the factor, exceeded the net proceeds of the cargoes thus shipped after the dissolution of the firm, the excess was not chargeable to the estate of the firm, but to the survivor only; it not being competent for him to charge the estate of the firm by drawing bills after the dissolution. *Dick* v. *Laird*, v. 328.

PARDON.

The competency of a witness is restored by a pardon. *United States* v. *Rutherford*, ii. 528.

PART-OWNERS.

1. See PARTNERSHIP, 28. *Magruder* v. *Bowie & Kurtz*, ii. 577.
2. One part-owner in a steamboat company, who acted as master and engineer, cannot maintain an action at law against his partners for compensation as engineer. *Taylor* v. *Smith*, iii. 241.

PAYMENT.

1. The obligee's indorsement of a payment upon a bond is not evidence to rebut the presumption of payment, unless made with the privity of the obligor. *Kirkpatrick* v. *Langphier*, i. 85.
2. An order, payable out of a particular fund, and not negotiable, is not payment of a preceding debt. *Governor of Virginia* v. *Turner's Sureties*, i. 261.
3. The receipt of the bond of a third person, "in part pay" of a precedent debt, is conclusive evidence of payment to that extent, although the obligor was insolvent when the receipt was given. *Muir* v. *Geiger*, i. 323.
4. A creditor may resort to his collateral security, although he has taken and discharged the bail of his principal debtor upon a *ca. sa.* *Hartshorne* v. *McIver*, i. 421.
5. If the creditor accept a deed of land in payment of the debt, it is a bar to the action for the debt; and if the title be defective, the creditor must look to his warranty. *Miller* v. *Young*, ii. 53.
6. See DEPOSITION, 25. *Ibid.*
7. See BANK, 3. *Bank of Alexandria* v. *Saunders*, ii. 183.
8. Payments made to the original creditor, after notice of the assignment of the debt, cannot be given in evidence in a suit brought by the assignee in the name of the original creditor. *Gardner et al.* v. *Tennison*, ii. 338.
9. An executor, indebted to his testator's estate, cannot, in an action upon his administration-bond, brought by creditors or legatees, discharge himself by showing payments to his co-executors. *United States* v. *Rose*, ii. 567.

PAYMASTER.

1. See EVIDENCE, 330, 331. *United States* v. *Van Zandt*, ii. 338.
2. If a regimental paymaster neglects, or fails to make any report to the Paymaster-General, once in two months, showing the disposition of the funds previously transmitted, with estimates for the next payment of the regiment, and neglects or fails for more than six months after receiving the funds, to account for the same, and is not recalled for such neglect, but additional funds are placed in his hands, notwithstanding his known neglects and defaults, the sureties in his official bond are not chargeable for his failure to account for such additional funds. *Ibid.*

PATENT RIGHT.

If a person, who has made an improvement upon a machine already patented by another, take out a patent for the whole improved machine, the patent is void; and if knowingly sold as a valid patent, the vendor cannot recover upon a note given for the purchase-money. *Turner* v. *Johnson*, ii. 287.

PENALTY.

1. If a statute prescribes a particular mode of recovering a penalty, it must be pursued. *United States* v. *Ellis*, i. 125.
2. See DAMAGES, 11. *Goldsborough* v. *Baker*, iii. 48.
3. See EQUITY, 65. *Robinson* v. *Cathcart*, iii. 377.

PENSION.
See EVIDENCE, 547. *United States* v. *Skam*, v. 367.

PERJURY.
1. Perjury may be punished by fine, imprisonment, and pillory. *United States* v. *Snow*, i. 123.
2. Perjury may be committed in an affidavit to an account for the purpose of getting it passed by the Orphans' Court. *United States* v. *Thomas*, iii. 293.
3. See OATH, 5. *United States* v. *Glover*, iv. 190.
4. See EVIDENCE, 468, 469. *United States* v. *Erskine*, iv. 299.
5. See EQUITY, 96. *United States* v. *Cowing*, iv. 613.
6. See INDICTMENT, 100. *Ibid.*
7. See FREEDOM, 95. *Runaways, &c.* iv. 489.
8. See EVIDENCE, 547. *United States* v. *Skam*, v. 367.

PEW-TAX.
Quære, whether the owner of a pew in the Protestant Episcopal Church in St. John's parish in the city of Washington, is personally liable for the taxes assessed upon such pew by the vestry of that parish, the owner not being a member of that church? *Mauro* v. *Vestry of St. John's Parish*, iv. 116.

PHYSICIAN.
1. See LICENSE, 6. *United States* v. *John Williams*, v. 62.
2. See MEDICAL SOCIETY, 2, 3, 4, 5, 6. *Ibid.*

PILLORY.
See PERJURY, 1. *United States* v. *Snow*, i. 123.

PIOUS USES.
See LUTHERAN CHURCH. *Kurtz* v. *Beatty*, ii. 699.

PLATS.
In ejectment the plats are part of the pleadings; in trespass they are evidence only. *Pancoast* v. *Barry*, i. 176.

PLEADING.
1. In trespass, the defendant cannot justify under the general issue. *Goddard* v. *Davis*, i. 33.
2. A plea to the jurisdiction is a good plea in bar after an office judgment. *Smith* v. *McCleod*, i. 43.
3. The Court will give the defendant time to plead after oyer. *Calvert* v. *Slater*, i. 44.
4. Oyer of the record of the judgment of a state court will not be given unless prayed for before the expiration of the rule to plead. *Cull* v. *Allen*, i. 45.
5. The plaintiff, in slander, may have leave to withdraw his general replication and file a general demurrer; and the Court will give the defendant leave to change his plea. *McGill* v. *Shehee*, i. 49.
6. The Court will not permit a plea to the merits to be withdrawn, to enable the defendant to demur specially. *Alricks* v. *Slater*, i. 72.
7. In an action of slander, if it appear from the plaintiff's evidence that, at the time of speaking the words, the defendant named his author, who was a responsible man, the defendant may avail himself of that evidence without pleading the matter as a special justification. *Hogan* v. *Brown*, i. 75.
8. Leave to amend by substituting general demurrer for the general issue. *Krouse* v. *Sprogell*, i. 78.
9. The act of limitations cannot be given in evidence upon *nil debet*. *Gardner* v. *Lindo*, i. 78.
10. Debt will lie against the maker of a promissory note. *Ibid.*

PLEADING, (*continued.*)

11. After verdict it is too late to object the want of profert; or that the action is in the *debet* and *detinet*. *Ibid.*
12. An office judgment may be set aside upon the plea of "never executrix." *Alexander* v. *West*, i. 88.
13. See OYER, 2. *Grahame* v. *Cooke*, i. 116.
14. In assault and battery, on the plea of "not guilty," the plaintiff is not bound to prove that the defendant struck or assaulted him first; but upon the plea of "*son assault demesne*" the defendant must prove that the plaintiff first assaulted him. *Stevens* v. *Lloyd*, i. 124.
15. If in an action upon a bond with collateral condition, the entry of the pleadings be "covenants performed, joined," the Court will send the cause back to the rules, as not being at issue. *Mayor and Commonalty of Alexandria* v. *Bowne*, i. 124.
16. After "not guilty and issue" to an action of debt on a judgment in Virginia suggesting a *devastavit*, the Court will not suffer the defendant to plead "*nul tiel record*," without showing sufficient cause for not pleading it before. *Bastable* v. *Wilson*, i. 124.
17. The Court will not suffer the general issue to be withdrawn to enable the defendant to plead in abatement. *Bank of Columbia* v. *Scott*, i. 134.
18. To an action of covenant for rent, the defendant cannot plead that his lessor had not paid the ground-rent according to his covenant. *Gill* v. *Patton*, i. 143.
19. If there be a special contract the plaintiff cannot recover upon a general count. *Rambler* v. *Choat*, i. 167.
20. In ejectment the plats are a part of the pleadings. In trespass they are evidence only. *Pancoast* v. *Barry*, i. 176.
21. In trespass *q. c. f.* upon "not guilty," pleaded with notice of "defence on warrant" the defendant may give his title in evidence as a justification, without pleading it specially. *Ibid.*
22. If one of two joint contractors, or partners, is sued alone, he must plead it in abatement; he cannot take advantage of it upon the general issue. *Clementson* v. *Beatty*, i. 178.
23. The declaration need not state by whom the letters testamentary were granted. *Cawood* v. *Nichols*, i. 180.
24. See OYER, 3. *Mason's Administrator* v. *Lawrason*, i. 190.
25. After judgment for the plaintiff on the defendant's demurrer, and writ of inquiry awarded, the Court will not permit the defendant to plead *de novo* without withdrawing his demurrer. *Woodrow* v. *Coleman*, i. 192.
26. An executor may be ruled to plead before the expiration of the year after letters granted. *Frazier* v. *Brackenridge*, i. 203.
27. See OYER, 4. *Offutt* v. *Beatty*, i. 213.
28. The Court will not give leave to amend a demurrer unless it goes to the merits. *Ibid.*
29. In debt, the declaration must be for a sum certain. *Ashton* v. *Fitzhugh*, i. 218.
30. The plea of limitations will not be received after office judgment. *Smith* v. *Stoops*, i. 238.
31. A plea of the pendency of a former suit in another court, must offer to produce the record of such suit. *Riddle* v. *Potter*, i. 288.
32. If the jury find for the plaintiff on the plea of *plene administravit*, he shall have judgment *de bonis testatoris* for his whole debt. *Fairfax* v. *Fairfax*, i. 292.
33. To set aside an office judgment, the Court will not suffer the defendant to plead specially, what may be given in evidence upon the general issue. *Vowell* v. *Lyles*, i. 329.
34. Outstanding judgments cannot be given in evidence upon *plene administravit*, but must be specially pleaded. *Hines* v. *Craig*, i. 340.

PLEADING, (*continued.*)

35. Upon the plea of "performance" the plaintiff is not bound to produce the original covenant. *Beall* v. *Newton*, i. 404.
36. The general issue upon a petition for freedom is that which puts in issue the simple question whether free or not. *Negro Ben* v. *Scott*, i. 407.
37. If the principal comes in and gives special bail, and sets aside the plea pleaded by the appearance bail, the plaintiff is entitled to a continuance of the cause. *Wise* v. *Groveman*, i. 418.
38. A special demurrer brings into question the substantial validity of the pleading of the demurring party. *Vowell* v. *Lyles*, i. 428.
39. In an action upon an auctioneer's bond for not paying over to A. and B. money received for sales at auction, a rejoinder that it had not been established by a judgment that money was due to them by the auctioneer, is an issuable plea to set aside an office judgment. *Mayor and Commonalty of Alexandria* v. *Moore*, i. 440.
40. The Court will permit the defendant to withdraw the general issue, and file a general demurrer. *Deakins* v. *Lee*, i. 442.
41. Counts charging the defendants as executors upon the promise of their testator, and upon their own promise as executors, in consideration of assets, may be joined in the same declaration, and the judgment upon each count will be *de bonis testatoris*. *Dixon* v. *Ramsay*, i. 472.
42. A declaration against the "Common Council of Alexandria," for work and labor done for "the mayor and commonalty," must show how the new corporation is liable for the debts of the old. *Lyles* v. *Common Council of Alexandria*, i. 473.
43. *Non assumpsit infra tres annos* is not a good plea to a promissory note payable thirty days after its date. *Ferris* v. *Williams*, i. 475.
44. The day stated in a declaration on an account is not material. *McLaughlin* v. *Turner*, i. 476.
45. The discharge of the principal under the insolvent law before the return of the *ca. sa.* may be pleaded in bar to a *scire facias* against the bail. *Byrne* v. *Carpenter*, i. 481.
46. An averment that the defendant neglected to send forward a letter, "as it was his duty to do," is only an allegation that the defendant was bound to send it by the next mail; not that he did not send it by the next mail. *Dunlop* v. *Munroe*, i. 536.
47. A count charging the loss to have been by the misfeasance of the defendant, or some other person employed by him, is not bad upon general demurrer. *Ibid.*
48. When a plea is pleaded to certain enumerated counts, the plaintiff may reply to it specially as it applies to some of the counts, and demur to it as it applies to other counts. *Ibid.*
49. After a plea of general performance, a rejoinder, stating an excuse for not performing, is bad. *McGowan* v. *Caldwell*, i. 481.
50. In actions against executors, the statute of limitations may be pleaded after office judgment. *Wilson* v. *Turberville's Ex'rs.* i. 492.
51. Upon *certiorari* in "forcible entry and detainer" no plea will be allowed but a traverse of the force or a possession of three years. *United States* v. *Browning*, i. 500.
52. A former recovery may be given in evidence upon *nil debet*. *Welsh* v. *Lindo*, i. 508.
53. A former recovery upon a count for goods sold and delivered, may be given in evidence in an action of debt upon a promissory note with an averment that judgment was confessed in the former action upon and for the note now declared upon. *Ibid.*
54. A copy will not be received as oyer when a profert has been made of the

PLEADING, (*continued.*)
original, and if a copy is offered the defendant may demur. *Wellford* v. *Miller*, i. 514.
55. A plea that the maker of the note had, at the date of the writ, goods and chattels to a greater amount than the claim, is no answer to an averment of insolvency. *Janney* v. *Geiger et al.* 547.
56. A count upon the indorsement of a promissory note, not payable to order, without averring a consideration for the indorsement, is bad in Virginia. *Ibid.*
57. The Court will not permit the defendant to tender an issue, to which he had demurred when tendered by the plaintiff. *Hodgson* v. *Marine Insurance Company*, i. 569.
58. After the rule to plead has expired the Court will not compel the plaintiff to produce his cause of action. *Bailey* v. *Sutton et al.* i. 551.
59. A declaration in trover for "a tool-chest containing divers tools and working utensils," and "a trunk containing clothes," is sufficiently certain. *Ball* v. *Patterson*, i. 607.
60. When the issue is joined upon a matter of law, the Court will not, at the request of either party, instruct the jury upon the matter of law submitted to the jury by the pleadings. *Common Council of Alexandria* v. *Brockett*, ii. 13.
61. The Court may, in its discretion, allow the general issue to be pleaded after judgment upon demurrer has been awarded by the Supreme Court of the United States, and a mandate to this Court to enter the judgment and award a writ of inquiry. *Sheehy* v. *Mandeville*, ii. 15.
62. See JUDGMENT, 33. *Short* v. *Wilkinson*, ii. 22.
63. See OFFICE-JUDGMENT, 9. *Janney* v. *Mandeville*, ii. 31.
64. When a contract has been executed, *indebitatus assumpsit* will lie for the amount due upon it. *Maupin* v. *Pic*, ii. 48.
65. See LIMITATION, 16. *Thompson* v. *Afflick*, ii. 46.
66. Case will lie for use and occupation of land in Virginia, but all the joint tenants or tenants in common, interested, must be joined as plaintiffs, in the action; and if they are not the defendant may take advantage of the omission, without pleading it in abatement. *Newton et al.* v. *Reardon*, ii. 49.
67. See LIMITATION, 17. *Gilpin* v. *Plummer*, ii. 54.
68. See AGREEMENT, 5. *Brockett* v. *Hammond*, ii. 56.
69. See NEGLIGENCE, 1, 2. *Dobbin* v. *Foyles*, ii. 65.
70. The statute of gaming may be given in evidence upon *non assumpsit* without notice. *Watson* v. *Baily*, ii. 67.
71. See LIMITATION, 20. *Morgan* v. *Evans*, ii. 70.
72. A person for whose benefit an action is brought, but who does not appear to be a party upon the record, nor to be interested in the cause cannot come in, and in his own name reply fraud and collusion between the legal plaintiff and the defendant, to defeat the action, and such a replication is bad upon demurrer. *Welch* v. *Mandeville et al.* ii. 82.
73. See ALIENAGE, 2. *Otteridge* v. *Thompson*, ii. 108.
74. See JUDGMENT, 35. *Stone* v. *Stone*, ii. 119.
75. In trespass when the defence is on warrant the plaintiff is not permitted to give evidence of trespass committed on a place not located on the plats; nor outside of the plaintiff's lines as located by him on the plats, although by his title he had a right to locate them so as to include the place where, &c. The plaintiff is bound by his location, and cannot claim land not included therein. The plaintiff cannot recover unless he was in possession of the land at the time of the alleged trespass. *Holmead* v. *Corcoran*, ii. 119.
76. A special plea of *non est factum* must conclude with a verification. *Contee* v. *Garner*, ii. 162.

PLEADING, (*continued.*)
77. See LIMITATION, 27. *Irwin* v. *Henderson et al.* ii. 167.
78. See DEMURRER, 13. *Ibid.*
79. An action of *assumpsit*, in the nature of an action of deceit, will lie for knowingly and falsely representing a slave sold by the defendant to the plaintiff, to be sound, although there should be a bill of sale under seal warranting the slave to be slave for life, without expressly warranting the soundness of the slave. *Grant* v. *Bontz*, ii. 184.
80. See LIMITATION, 29. *Scott* v. *Lewis*, ii. 203.
81. See JOINT DEFENDANTS, 3. *Edmondson* v. *Barrell*, ii. 228.
82. The defendant cannot take advantage of a variance between the writ and declaration by demurrer without praying oyer of the writ. *Triplett* v. *Warfield*, ii. 237.
83. See JUDGMENT, 41, 42. *Union Bank* v. *Crittenden*, ii. 238.
84. See LIMITATION, 31. *Mechanics Bank* v. *Lynn*, ii. 246.
85. The Court, at the imparlance term, will permit the defendant to plead any issuable plea to the merits, although the rule to plead shall have expired. *Darnall* v. *Talbot*, ii. 249.
86. If the defendant instruct his attorney to plead the statute of limitations and he plead it after the rule-day, the Court will refuse to order the plea to be stricken off, if the attorney, having been recently admitted to practice, was ignorant of the rule which requires that such a plea must be pleaded strictly within the rule-day. *Wetzel* v. *Bussard*, ii. 252.
87. See BILLS AND NOTES, 103. *Lapeyre* v. *Gales*, ii. 291.
88. See EVIDENCE, 323. *Dorsey* v. *Chenault*, ii. 316.
89. If the jury find for the plaintiff in replevin upon the plea of "*non demisit modo et forma*," the judgment must be for the plaintiff upon the whole case, although they find for the defendant upon the issue of "*no rent arrear.*" *Ibid.*
90. Upon a demurrer to evidence, the Court cannot render judgment for the plaintiff if the declaration be substantially defective. *Bank of the United States* v. *Joseph Smith*, ii. 319.
91. In an action against the indorser of a note which, in the body of it, is made payable at a particular bank, the declaration must contain an averment of demand of payment at that bank. *Ibid.*
92. In an action of slander, if the declaration contain some good and some bad counts the Court will refuse a general instruction to the jury that the plaintiff cannot recover without proof of the facts stated in the good counts; the question whether the other counts are, or are not good, being properly a question arising on a motion in arrest of judgment. *Turner* v. *Foxall*, ii. 324.
93. Where an administrator is defendant, the Court sitting in Alexandria will permit him to plead the statute of limitations at the trial term; to which plea the plaintiff cannot make more than one replication. *Offutt* v. *Hall*, ii. 363.
94. In cases of misdemeanor, the Court, in Alexandria, will not compel the traverser to plead to the indictment until a prosecutor's name be written on the indictment; and the recognizance will be respited, unless the Attorney of the United States shall satisfy the Court that it is a case which ought to be excepted from the general rule. *United States* v. *Carr*, ii. 439.
95. See BOOKS. 4. *Central Bank* v. *Tayloe*, ii. 427.
96. See CONSIDERATION, 14. *Rice* v. *Barry*, ii. 447.
97. A count, upon a promise by one partner to pay, in consideration that the plaintiff who arrested the other partner upon a *ca. sa.*, would at the present defendant's request, forbear to prosecute that other partner upon the *ca. sa.* and would not trouble him, but let him go out of the custody of

PLEADING, (*continued.*)
the marshal; and in further consideration that it was a partnership debt for which the present defendant was equally liable with the other partner, and which he had promised that other partner to pay, is not double nor multifarious, and is good even upon special demurrer. *Ibid.*
98. If the plaintiffs are misnamed in the title of the cause in the margin of a plea of limitations, the plea is bad on special demurrer. But see *Bank of Columbia* v. *Ott, post*, 529. *Bank of Columbia* v. *Jones*, ii. 516.
99. See ATTACHMENT, 58. *Baker* v. *Mix*, ii. 525.
100. The title of the cause, written in the margin of a plea, is no part of the plea, but is only an intimation to the clerk in what cause he is to enter the plea; and a mistake in the name of one of the parties, made in the marginal title, is not fatal to the plea, even upon special demurrer. *Bank of Columbia* v. *Ott*, ii. 529.
101. In trover by husband and wife for a conversion of the wife's goods before marriage, the declaration must conclude, "*ad damna ipsorum.*" *Semmes and Wife* v. *Sherburne*, ii. 534.
102. See ATTACHMENT, 59, 60, 61. *Jones* v. *Kemper*, ii. 535.
103. See EXECUTION, 29. *Offutt* v. *Henderson*, ii. 553.
104. See GAMING, 14. *Welford* v. *Gilhan*, ii. 556.
105. In an action against the indorser of a promissory note payable sixty days after date, *non assumpsit infra tres annos* is a bad plea upon general demurrer; it ought to be "*actio non accrevit.*" *Bank of Columbia* v. *Ott*, ii. 575; *Union Bank* v. *Eliason*, ii. 667.
106. See LIMITATION, 46. *Union Bank* v. *Eliason*, ii. 667.
107. In an action for maliciously arresting and holding the plaintiff to bail without probable cause, the declaration must contain an averment that the suit in which the plaintiff was arrested and holden to bail, was determined. *Barrell* v. *Simonton*, ii. 657.
108. See INSOLVENT, 53, 54. *Keirll* v. *McIntire*, ii. 670.
109. See BANK OF COLUMBIA, 7. *Bank of Columbia* v. *Sweeny*, ii. 704.
110. A variance between the *capias ad respondendum*, and the declaration is not a ground for arresting the judgment. *Wilson* v. *Berry*, ii. 707.
111. See ATTACHMENT, 75. *Baker* v. *Mix*, iii. 1.
112. See EVIDENCE, 402. *Maret & Son* v. *Wood*, iii. 2.
113. See AMENDMENT, 33. *Kerr* v. *Force*, iii. 8.
114. See JUSTIFICATION, 1 to 25. *Ibid.*
115. See AUCTIONEER, 2. *Fowle* v. *Corporation of Alexandria*, iii. 70.
116. See ADMINISTRATION, 30. *North* v. *Clarke*, iii. 93.
117. See CHARTER PARTY, 4. *Winter* v. *Simonton*, iii. 62.
118. *Id.* 5. *Id.* 104.
119. In an action of debt upon a replevin-bond, setting forth the condition, and averring special breaches, the plea of general performance is a bad plea; so is the plea of *non damnificatus;* so is the plea that the plaintiff had no property in the goods replevied; so is the plea of *nul tiel record*, if no record be averred in the declaration; and so is a plea to the whole declaration, which is an answer to a part only. *Wood* v. *Franklin*, iii. 115.
120. See FLOUR, 1, 2, 3. *Cloud* v. *Hewitt*, iii. 199.
121. See GUARDIAN, 20. *United States* v. *Lile*, iii. 251.
122. See JUDGMENT, 80. *Mandeville* v. *Cookenderfer*, iii 257.
123. Although the term should continue beyond the rule-day, the plaintiff is entitled to judgment by default if the defendant did not plead by that day. *Fowle* v. *Bowie*, iii. 291.
124. See ADMINISTRATION, 32. *Wise* v. *Getty*, iii. 292.
125. See AMENDMENT, 35. *Clarke* v. *Mayfield*, iii. 353.
126. See ACCOUNT, 9. *Semmes* v. *Lee*, iii. 439.

PLEADING, (*continued.*)
127. See AMENDMENT, 39. *Mandeville* v. *McDonald*, iii. 631.
128. The remedy for a defective return of a *scire facias* against terre-tenants, is not a plea in abatement; nor a motion by the defendants to quash the writ, but a motion to quash the return; the return, however, may be amended. The defendants may lay a rule on the plaintiff to declare; and the marshal's return to the *scire facias* will make part of the declaration, and the defendants will have time to plead. *Ibid.*
129. The terre-tenants warned may plead, in delay of execution, that there are other terre-tenants in the same county, not summoned. *Ibid.*
130. See CORPORATION OF WASHINGTON, 14, 15. *McCue* v. *Corporation of Washington*, iii. 639.
131. See DEMURRER, 27, 28. *Ibid.*
132. See LIMITATION, 58. *Ibid.*
133. In replevin, in Alexandria, several counts cannot be joined in the same cognizance. *Rotchford* v. *Meade*, iii. 650.
134. If, after setting forth in the declaration, the condition of the bond, the plaintiff does not show in the declaration a breach of the condition, the mere averment of the non-payment of the penalty, does not show a cause of action. *Hazel* v. *Waters*, iii. 682.
135. See APPEAL, 16, 17, 18. *Tucker* v. *Lee*, iii. 684.
136. See EVIDENCE, 446. *Stanback* v. *Waters*, iv. 2.
137. See JOINT DEFENDANTS, 9. *Bank of Columbia* v. *Hyatt*, iv. 38.
138. See APPEAL, 25. *Bank of Metropolis* v. *Swann*, iv. 139
139. After issue joined upon *nul tiel record*, and the cause is called for trial upon that issue, the Court will not permit the defendant to plead that the plaintiff never was administrator. *Duvall* v. *Wright*, iv. 169.
140. Upon the plea of no rent arrear, in replevin, the whole burden of proof is on the party pleading it. *Hungerford* v. *Burr*, iv. 349.
141. See LIEN, 17. *King et al.* v. *Shaw*, iv. 457.
142. See EQUITY, 90, 91. *Oliver* v. *Decotur*, iv. 458.
143. The plea of "no rent arrear," admits the demise as laid in the avowry. *Greer* v. *Nourse*, iv. 527.
144. A single bill may be declared upon according to its legal effect. Upon a plea of payment, it is not necessary to produce in evidence the single bill; the plea admits its execution, and that it is truly stated in the declaration. *Turner* v. *White*, iv. 465.
145. See FALSE IMPRISONMENT, 2. *Ingram* v. *Butt*, iv. 701.
146. See EVIDENCE, 484. *Pierson* v. *Elgar*, iv. 454.
147. See AMENDMENT, 46. *Suckley* v. *Slade*, v. 123.
148. See EJECTMENT, 15. *Worthington* v. *Etcheson*, v. 302.
149. See EVIDENCE, 549. *Steam Packet Co.* v. *Bradley*, v. 393.
150. See LIMITATION, 83. *Barnard* v. *Tayloe*, v. 403.
151. See ATTACHMENT, 98. *Ten Broeck* v. *Pendleton*, v. 464.
152. See ABATEMENT, 11. *Fenwick* v. *Grimes*, v. 603.
153. See EVIDENCE, 560. *Lenox* v. *Gorman*, v. 531.

POSSESSION.
1. See BARGAIN AND SALE. *Fraser et al.* v. *Hunter*, v. 470.
2. The possession of a person claiming title without definite metes and bounds, will not, in law, be deemed to extend beyond the actual possession proved. *Ibid.*
3. There must be actual possession by the plaintiff of the *locus in quo*, at the time of the supposed trespass. *Ibid.*
4. See EJECTMENT, 19. *Costigan* v. *Wood*, v. 507.
5. See DECREE, 5. *Carroll* v. *Dowson*, v. 514.
6. If the plaintiff in replevin never had previous possession of the goods

POSSESSION, (*continued.*)
replevied, the Court will, of course, order them to be returned to the defendant, on motion, upon the usual security. *Emack* v. *Crabb*, v. 611.
7. See EJECTMENT, 21, 22, 23, 24, 26. *Wilkes* v. *Elliot*, v. 611.

POSTMASTER.
1. The instructions of the postmaster-general to the deputy postmasters, may be given in evidence in an action on the case against a deputy postmaster for negligence. *Dunlop* v. *Munroe*, i. 536.
2. A deputy postmaster and his clerks are only bound to use such care and diligence in the discharge of their duties, as a prudent man exercises in his own affairs. *Ibid.*
3. Deputy postmasters are civilly liable for the acts of their servants and clerks; but the neglect of the servant or clerk cannot be given in evidence upon a count charging the loss to have been incurred by the neglect of the deputy postmaster himself. *Ibid.*
4. It is to be presumed *primâ facie* that a sworn officer has discharged his duty faithfully. *Ibid.*

POSTMASTER-GENERAL.
1. See EXECUTIVE OFFICERS, 1 – 8. *United States* v. *Amos Kendall* v. 163.
2. See ATTACHMENT, 96. *Id.* 385.

POST-OFFICE.
1. In an indictment under the 18th section of the Act of the 30th of April, 1810, regulating the post-office establishment, against a person employed in a department of the general post-office, charging him with embezzling letters with which he was intrusted, and stealing therefrom sundry bank-notes, it is not necessary to aver that the letters were intended to be conveyed by post, nor to describe particularly the letters or the bank-notes, it being averred that the particular description of the letters, and of the bank-notes was unknown to the grand jurors. *United States* v. *Golding*, ii. 212.
2. It is not a valid objection to the indictment that the embezzling of the letters and stealing therefrom the bank-notes, are charged in the same count of the indictment. *Ibid.*

POUNDAGE.
1. See INSOLVENT, 54. *United States* v. *Smith*, iii. 66.
2. See ATTACHMENT, 81. *Ringgold* v. *Lewis*, iii. 367.
3. See MARSHAL, 23 – 26. *Mason* v. *Muncaster*, iii. 403.
4. See FEES, 20. *Swann* v. *Ringgold*, iv. 238.
5. See COSTS, 48. *Ringgold* v. *Hoffman*, iv. 201.

POUND-BREACH.
See DAMAGES, 23. *Young* v. *Hoover*, iv. 187.

PRACTICE.
1. Upon a writ of inquiry in Virginia, the plaintiff's own oath may be received in evidence of the amount of the claim. *Manderille* v. *Washington*, i. 4.
2. A special demurrer will not be admitted to set aside an office-judgment. *Whetcroft* v. *Dunlop*, i. 5.
3. Special bail will not be required upon setting aside an office-judgment, if appearance-bail was not required. *Shean* v. *Towers*, i. 5.
4. A defective forthcoming-bond will, at the plaintiff's request, be quashed, as well as the execution upon which it was founded. *Sutton* v. *Manderille*, i. 32.
5. It is not necessary to give notice of an application for an injunction. *Love* v. *Fendall's trustees*, i. 34.

PRACTICE, (*continued.*)

6. A motion may be made against a sheriff in the name of the original plaintiff, although he has taken the insolvent oath. *Fendall* v. *Turner*, i. 35.
7. Bail will not be required in an action against an indorser by his immediate indorsee, while another action is pending against him by a remote indorsee. *Johnson* v. *Harris*, i. 35.
8. A motion to appear without bail will not be heard before the appearance-day, if the defendant be not in actual custody. *Olive* v. *Mandeville*, i. 38.
9. An attachment issued upon a return of "*non est*" before the appearance-day, will be quashed. *Camilloz* v. *Johns*, i. 38.
10. A constable may be suspended from office upon affidavit, without a rule to show cause. *Bowling's case*, i. 39.
11. Bail is not discharged by a discontinuance of the action at the rules, if it be reinstated. *Gadsby* v. *Miller*, i. 39.
12. It is no cause for arresting the judgment, that the jury found the damages in pounds, when the damages in the declaration were laid in dollars. *Butts* v. *Shreve*, i. 40.
13. It is no cause for arresting the judgment, that the debt is reduced by offsets below the original jurisdiction of the Court. *McKnight* v. *Ramsay*, i. 40.
14. The affidavit of service of notice, by leaving it with the defendant's wife, need not state that she was informed of the purport of the notice. *McCall* v. *Towers*, i. 41.
15. In slander, bail is not required if the affidavit does not state the words spoken, and that the defendant is about to leave the district. *Langstraaz* v. *Powers*, i. 42.
16. A plea to the jurisdiction, is a good plea in bar after an office-judgment. *Smith* v. *McCleod*, i. 43.
17. The Court will give the defendant time to plead after oyer. *Calvert* v. *Slater*, i. 44.
18. The Court in Washington, may order an indictment to be sent to the grand jury without a previous presentment for the same offence. *United States* v. *Madden*, i. 45.
19. Oyer of a record of a judgment of a State court, will not be given unless prayed for before the expiration of the rule to plead. *Cull* v. *Allen*, i. 45.
20. The Court will not, in a criminal prosecution, permit counsel to argue a point of law to the jury, which has been decided by the Court in a previous cause. *Commonwealth* v. *Zimmerman*, i. 47; *United States* v. *Cottom*, i. 55.
21. When a jury returns into Court to re-examine a witness, neither party will be permitted to ask any question of the witness; nor to make any motion to the Court in the presence of the jury. *Ibid.*
22. The plaintiff, in slander, may have leave to withdraw his general replication and file a general demurrer; and the Court will give the defendant leave to change his plea. *McGill* v. *Sheehy*, i. 49.
23. After plea by appearance-bail, the defendant may give special bail, and plead *de novo*. *Pickett* v. *Lyle*, i. 49.
24. Security for costs may be given at any time before judgment on the rule. *Reverez* v. *Camellos*, i. 50.
25. Judgment will not be rendered on motion of one surety against another, unless the insolvency of the principal be fully proved. *White* v. *Perrin*, i. 50.
26. A *capias* may be issued as the first process against a person for unlawful gaming. *United States* v. *Cottom*, i. 55.
27. The Court will not suffer counsel, in a criminal cause, to argue to the jury a point of law which has been decided by the Court. *Ibid.*

PRACTICE, (*continued.*)
28. The Court will not interfere to prevent bail from seizing the prineipal, further than to keep order in Court. *Smith* v. *Catlett*, i. 56.
29. An information may be amended. *United States* v. *Shuck*, i. 56.
30. Notice, given to the attorney at law, of a motion for a *dedimus*, is sufficient. *Potts* v. *Skinner*, i. 57.
31. The statute of limitations eannot be given in evidence on the general issue. *Neale* v. *Walker*, i. 57.
32. One hour's notice of taking a deposition is sufficient. *Nicholls* v. *White*, i. 58.
33. The Court is not bound, at the request of either party, to instruct the jury after they have retired, unless the jury themselves request instruction. *Forrest* v. *Hanson*, i. 63.
34. Upon calling the appearance docket, if the defendant offers to appear, the Court will not give the plaintiff's attorney time to proeure an affidavit to hold the defendant to special bail. *Meade* v. *Roberts*, i. 72.
35. The Court will not permit a plea to the merits to be withdrawn to enable the defendant to demur specially. *Alricks* v. *Slater*, i. 72.
36. No civil cause is to be tried unless it has stood one term at issue. *Bowyer* v. *Roberts*, i. 73.
37. The defendant will not be ruled to argue a demurrer at the term in which the demurrer shall be joined by him, although the rule to join in the demurrer shall have expired before the term. *Bowman* v. *French*, i. 74.
38. Leave to amend on payment of the costs of the term, or a continuance, at the plaintiff's option. *Milburne* v. *Kearnes*, i. 77.
39. Leave to substitute a general demurrer for the general issue. *Krouse* v. *Sprogell*, i. 78.
40. An inhabitant of Alexandria county may be arrested in Washington county, without a return of "*non est*" in Alexandria county. *Thompson* v. *Lacy*, i. 79.
41. It is no bar to an execution upon a supersedeas in Washington county, that the plaintiff has recovered another judgment in Alexandria county upon the same eause of action, if it be not satisfied. *Curry* v. *Lovell*, i. 80.
42. A *capias* is the proper process upon an indictment for a misdemeanor found after a summons to show cause why an indictment or information should not be filed. *United States* v. *Veitch*, i. 81.
43. A prosecutor has no right to withdraw the prosecution without the eonsent of the United States' Attorney. *Commonwealth* v. *Dulany*, i. 82.
44. Upon a trial for larceny, the owner of the stolen goods is a competent witness in chief, upon filing with the clerk of the Court, for the use of the prisoner, a release of the witness's right to one half of the fine. *United States* v. *Hare*, i. 82.
45. The name of a prosecutor in Alexandria, must be written at the foot of an indictment for keeping a bawdy-house. *United States* v. *Mary Rawlinson*, i. 83.
46. An information may be discontinued before the defendant's appearance. *Commonwealth* v. *Eakin*, i. 83.
47. Judgment entered by mistake of the clerk, may be set aside at the next term, and the execution quashed. *United States* v. *McKnight*, i. 84.
48. An instrument can be proved only by the subscribing witness, unless, &c. *Rhodes* v. *Rigg*, i. 87.
49. An office judgment may be set aside upon the plea of "never exeeutrix." *Alexander* v. *West*, i. 88.
50. No subpœna upon attachment in chancery shall issue before bill filed. *General Rule*, i. 89.
51. A variance between the *capias* and the declaration cannot be pleaded to set aside an office-judgment. *Hartshorne* v. *Ingle*, i. 91.

PRACTICE, (*continued.*)

52. Upon reinstatement after nonsuit, the Court will not admit the plea of limitations, unless upon affidavit of merits. *McIver* v. *Moore*, i. 90.
53. Bail residing in Alexandria county cannot be received to an action in Washington county. *Coningham* v. *Lacy*, i. 101.
54. Where two become bail jointly and severally, and two writs of *scire facias* are issued, and one of the bail surrenders the principal, he must pay the costs upon both writs. *Pennington* v. *Thornton*, i. 101.
55. If the cause has been standing five terms without issue or rule to plead, the Court will continue it at the defendant's request. *Morgan* v. *Voss*, i. 109.
56. The Court will not commit a bankrupt, for want of bail, who has surrendered to the commissioners, and whose examination is not closed, although the forty days have expired. *Lingan* v. *Bailey*, i. 112.
57. A special session for the trial of criminal causes may be ordered at an adjourned session of the Court, and may be holden at the same time with the adjourned session. *Memorandum*, i. 114.
58. The Court will give the defendant leave to withdraw the plea of "covenants performed," and to file a special plea to the merits not decidedly bad, leaving the plaintiff to his demurrer. *Gill* v. *Patten*, i. 114.
59. The Court, in Alexandria, will not grant a commission to examine witnesses, in a suit at common law, without affidavit showing it to be necessary for the purposes of justice. *Sutton* v. *Mandeville*, i. 115.
60. After plea, replication, rejoinder, and special demurrer, the defendant is not entitled to oyer of the plaintiff's letters of administration, nor to plead that the plaintiff is not administrator. *Graham* v. *Cooke*, i. 116.
61. After a writ of error has been served and returned to the Supreme Court, the record is no longer before the Court below, and cannot be there amended; although, at an adjourned session of the same term, it appear that the writ of error has been dismissed in the Court above at the request of the party praying the amendment. *United States* v. *Hooe*, i. 116.
62. Misdemeanors, in Alexandria county, are not to be tried until the term next after that to which the *capias* shall have been returned executed. *General Rule*, i. 122.
63. On a plea of tender, the defendant holds the affirmative, and has a right to open and close the cause. *Auld* v. *Hepburn*, i. 122.
64. The Court will not continue a cause because the plaintiff cannot discover the place of residence of his witness. *Smith* v. *Potts*, i. 123.
65. If a party has had no opportunity to cross-examine a witness whose deposition has been taken under the act of Congress, the Court will continue the cause. *Dade* v. *Young*, i. 123.
66. If the cause be not at issue, the Court will send it back to the rules. *Mayor and Commonalty of Alexandria* v. *Bowne*, i. 124.
67. After "not guilty and issue" to an action of debt on a judgment, in Virginia, suggesting a *devastavit*, the Court will not suffer the defendant to plead, *nul tiel record*, without showing sufficient cause for not pleading it before. *Bastable* v. *Wilson*, i. 124.
68. The Court will permit a defendant to confess judgment for the whole amount of damages laid in the writ, although no declaration be filed. *McNeil* v. *Cannon*, i. 127.
69. If the clerk neglect to strike out a judgment as ordered by the Court, it may be done by order of the Court at the next term, on affidavit of the facts. *Ex parte Smith*, i. 127.
70. A new trial will not be granted on affidavit that the plaintiff has since discovered testimony to discredit a witness who was examined at the trial, if that witness was not the only witness to the point on which he testified. *Brooke* v. *Peyton*, i. 128.

PRACTICE, (*continued.*)
71. In a chancery attachment against a British bankrupt, the Court will permit the assignees to appear and defend the suit, and to release the attached effects, on their producing a notarial copy of the commissioner's proceedings. *Wilson* v. *Stewart*, i. 128.
72. On a motion to set aside an office judgment upon an injunction bond, the Court will not suffer the defendant to plead that the obligee was dead at the time of the execution of the bond. *Porter* v. *Marsteller*, i. 129.
73. An attachment for contempt in not attending as a witness, must not be served in the court house. *United States* v. *Scholfield*, i. 130.
74. If the witness arrive before service of the attachment and makes a reasonable excuse, the Court will countermand the attachment on payment of the cost of issuing it. *Ibid.*
75. The order of calling the trial docket. *General Rule*, i. 133.
76. The Court will not suffer the general issue to be withdrawn to enable the defendant to plead in abatement. *Bank of Columbia* v. *Scott's administrators*, i. 134.
77. The Court will not continue the cause because a commission to examine a witness has not been returned, unless the materiality of the testimony be shown by affidavit. *Morgan* v. *Voss*, i. 134.
78. Leading questions may be asked in cross-examination. *Dawes* v. *Corcoran*, i. 137.
79. Security for costs cannot be given in the clerk's office; it must be done in open court. *Offutt* v. *Parrott*, i. 139.
80. It is not necessary to lay a rule on a defendant in chancery, to answer the bill. *Anonymous*, i. 139.
81. A forthcoming bond given by mistake for a sum less than the judgment, may be quashed, with the execution, on the motion of the plaintiff, on payment of the costs. *Stevens* v. *Lloyd*, i. 141.
82. An adjourned session of a term is an extension of the preceding session, and has no jurisdiction of office-judgments rendered between the original and the adjourned session. *Memorandum*, i. 159.
83. A defendant arrested to appear at next term cannot come in and confess judgment at this term, the writ being returnable at the next term. *Askew* v. *Smith*, i. 159.
84. The defendant cannot appear to a chancery attachment in Virginia, without giving special bail. *Mayor and Commonalty of Alexandria* v. *Cooke et al.* i. 160.
85. In a chancery attachment in Virginia, the Court may order the attached debt to be paid over to the plaintiff, on his giving security to refund, &c. although the plaintiff's right may be doubtful. *Wilson* v. *Dandridge et al.* i. 160.
86. After the jury has returned into Court to give their verdict, the Court will not permit a witness to be examined, who has come into Court since the jury retired. *Riley* v. *Cooper*, i. 166.
87. After the term in which a rule was laid on the plaintiff to give security for fees, the clerk, on a motion for judgment on the rule, need not prove the plaintiff to be a non-resident. *Devigny* v. *Moore*, i. 174.
88. A prisoner charged with counterfeiting notes of the Bank of the United States is not entitled to a copy of the indictment and list of the witnesses two days before pleading. *United States* v. *Williams & Ray*, i. 178.
89. After conviction of assault and battery, the Court will permit the defendant to give security to abide the judgment. *United States* v. *Greenwood*, i. 186.
90. The defendant has not a right to open the cause in all cases where he holds the affirmative of the issue. *Sutton* v. *Mandeville*, i. 187.
91. After judgment for the plaintiff on the defendant's demurrer, and writ of

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inquiry awarded, the Court will not permit the defendant to plead *de novo* without withdrawing the demurrer. *Woodrow* v. *Coleman*, i. 192.
92. Actions of replevin may, in Alexandria, be tried at the first term. *Wilson* v. *Johnston*, i. 198.
93. An executor may be ruled to plead before the expiration of the year after letters granted. *Frazier* v. *Brackenridge*, i. 203; *Buckley* v. *Beatty*, i. 245.
94. The defendant may give special bail at any time during the return-term, although the plaintiff may have taken an assignment of the bail-bond. *Rhodes* v. *Brooke*, i. 206.
95. The Court will not, at a subsequent term, reinstate a cause which has been *non-prossed* for want of security for costs. *Lindsay* v. *Twining*, i. 206.
96. A *venire* may be postponed. *United States* v. *Peacock*, i. 215.
97. After jury sworn, the Court will not quash the indictment before verdict, without the prisoner's consent. *Ibid.*
98. Sureties of an insolvent debtor in a duty-bond, are not entitled to judgment at the first term against their principal. *Johns* v. *Brodhag*, i. 235.
99. The plaintiff having proceeded both at law and in equity, must make his election. *Allison* v. *Alexander*, i. 237.
100. After office judgment, the Court will not receive the plea of limitations. *Smith* v. *Stoops*, i. 238.
101. If an infant be brought into Court, a guardian *ad litem* may be appointed without commission. *Reinhart* v. *Orme*, i. 244.
102. Administrators are bound to plead before the expiration of the year from the date of the letters of administration. *Frazier* v. *Brackenridge*, i. 203; *Buckley* v. *Beatty's Administrator*, i. 245.
103. The Court will not permit an amendment making new parties. *Morris* v. *Barney*, i. 245.
104. After plea of "property in the defendant" the Court will permit the defendant to plead "property in a stranger," on payment of all antecedent costs, and a continuance if requested. *Semmes* v. *O'Neale*, i. 246.
105. If, by an amendment, the nature of the action be changed, it is to be considered as a new cause and may be continued although at the fifth term after its commencement. *Schnertzel* v. *Purcell*, i. 246.
106. A cause is not regularly for trial unless it has been put in issue at a preceding term. *Ibid.*
107. An administrator, in Alexandria county, has a right to give a preference to a creditor, by confessing a judgment; and a court of equity will not interfere by injunction. *Wilson* v. *Wilson*, i. 255.
108. The Court will not permit a point of law to be argued to the jury which the Court has decided. *Johnston* v. *Harris*, i. 257.
109. Witnesses are entitled to their fees, although the summons be served by a private person. *Power* v. *Semmes*, i. 247.
110. In an action upon a bond conditioned to pay money by instalments, if the verdict be rendered before all the instalments are due, the jury must find how much is due upon each instalment, and when payable; as well those to become payable as those already payable. *Davidson* v. *Brown*, i. 250.
111. Causes *non-prossed* at a previous session of the same term, may be reinstated if the absence of the plaintiff's counsel was caused by severe sickness. *Memorandum*, i. 253.
112. The Court, at an adjourned session, will not hear a motion to dissolve an injunction, upon notice given after the first session of the term. *Burford* v. *Ringgold*, i. 253.
113. After a general appearance, the defendant may plead in abatement, that the *capias* was not properly served. *Knox* v. *Summers*, i. 260.

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114. *Quære*, whether a defendant discharged under the insolvent law after arrest upon *capias ad respondendum*, and before the return, can be compelled to appear. *Stover* v. *Densley*, i. 267.
115. If there be no declaration, the Court will not require special bail if the plaintiff does not appear at the return of the writ. *Thompson* v. *Cavenaugh*, i. 267.
116. If there be only one issue to be tried, and the defendant holds the affirmative of that issue, he has a right to open and close the argument. *Davidson* v. *Henop*, i. 280.
117. When there is a rule to employ new counsel, the cause may be continued after the 5th term. *Fenwick* v. *Brent et al.* i. 280.
118. If the plaintiff has not a domicil in this district, he may be ruled to give security for costs. *Duane* v. *Rind*, i. 281.
119. Leave to amend on payment of full costs. *Ferris et al.* v. *Williams*, i. 281.
120. In actions upon duty-bonds, the United States are entitled to judgment at the first term. *United States* v. *Johns*, i. 284.
121. Counter affidavits cannot be read on a motion for the continuance of a cause. *Manning* v. *Jamesson et al.* i. 285.
122. When the writ of inquiry is set aside by the defendant, the plaintiff may have the cause continued at the defendant's costs. *McCulloch* v. *DeButts*, i. 285.
123. Judgment cannot be confessed before the return-term of the writ. *Haden* v. *Perry*, i. 285.
124. It is not necessary that the notice of taking a deposition under the Act of Congress should state the reason of taking it. *DeButts* v. *McCulloch*, i. 286.
125. An attachment cannot be served in court. *Davis* v. *Sheron*, i. 287.
126. The Court is not bound to give an opinion *instanter* on the trial of a cause, but may direct the point to be saved by a special verdict. *Croudson* v. *Leonard*, i. 291.
127. Cause may be shown against a decree *nisi* at any time during the term and before any other order is made. *Allen* v. *Thomas*, i. 294.
128. A deposition taken more than six months after replication in a chancery suit, cannot be read at the hearing, unless taken by consent, or by order of the Court, or out of the district. *Wiggins* v. *Wiggins*, i. 299.
129. Notice, of motion to dissolve an injunction, given on the first day of the term, is notice that the motion is to be made at the next succeeding term. *Ramsay* v. *Wilson*, i. 304.
130. Affidavits of jurors will not be received to show miscalculation, mistake or misconduct of jurors in giving their verdict. *Ladd* v. *Wilson*, i. 305.
131. In case of the death of a plaintiff, the filing of letters of administration is such a proceeding in the cause before the tenth day of the second court as will justify the Court in retaining cognizance of the cause under the Act of Maryland, 1785, c. 80, § 1. *Wilson* v. *Harbaugh*, i. 315.
132. Upon an attachment under the Maryland Act, 1795, c. 56, the plaintiff must prove his debt before he can obtain judgment of condemnation. *Stephenson* v. *Giberson*, i. 319.
133. To obtain an attachment under the Maryland Act, 1795, c. 56, it is not necessary that all the plaintiffs should make affidavit; nor that it should appear that they were all citizens of the United States. *Birch et al.* v. *Butler*, i. 319.
134. A writ of attachment and *capias* may be amended by inserting the christian names of the plaintiffs, with the leave of the Court, before condemnation. *Ibid.*
135. It is not necessary that a forthcoming bond should recite the return of the execution, nor the certificate of the service, nor the name of the person

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by whom it was served; but it must state that the execution was served. *Ambler* v. *McMechen*, i. 320.
136. It is no ground of general demurrer to an indictment for a misdemeanor under the laws of Virginia of 1792, and 1795, that the name of a prosecutor is not written at the foot of the indictment. *United States* v. *Sanford*, i. 323.
137. Supplemental affidavits will not be received upon a motion for the continuance of a cause. *Norwood* v. *Sutton*, i. 327.
138. Upon executing a writ of inquiry upon a judgment by default, the jury must find at least one mill in damages. *Frazier* v. *Lomax*, i. 328.
139. A petitioner for freedom, in custody, will not be discharged upon the request of the master, unless upon security given by him to have the petitioner forthcoming, &c., to prosecute his petition for freedom. *Ex parte Negro Letty*, i. 328.
140. If bail has not been required upon the *capias ad respondendum*, it will not, upon setting aside the office-judgment, be required without affidavit. *Gordon* v. *Riddle*, i. 329.
141. To set aside an office-judgment the Court will not permit the defendant to plead, specially, matter which may be given in evidence upon the general issue. *Vowel* v. *Lyles*, i. 329.
142. In all cases of felony, by the laws of Virginia the prisoner is entitled to a peremptory challenge of twenty jurors. *United States* v. *Browning*, i. 330.
143. In a civil cause, this Court may send an attachment into Virginia for a witness who resides within one hundred miles of the place of trial; and such attachment is to be directed to and served by the marshal of the district of Virginia. *Voss* v. *Luke*, i. 331.
144. The defendant is not entitled, of course, to a continuance, upon the death of the plaintiff. *Alexander* v. *Patten*, i. 338.
145. The Court will not compel the opposite party to produce depositions taken on his part by consent; nor enforce the private agreements of counsel; but will see that parties are not entrapped by such agreements. *Moore* v. *Dulany*, i. 341.
146. The defendant may, at the trial court, give notice to a non-resident plaintiff, that security for costs will be required; and the cause will be continued if the plaintiff is not ready to give the security. *Thomas* v. *Woodhouse*, i. 341.
147. When depositions have been taken by one party without notice to the other, the cause may be continued. *Straas* v. *Marine Insurance Company of Alexandria*, i. 343.
148. The Court will not continue a cause for the absence of a witness who has been summoned, and who lives within one hundred miles of this place, if no attachment has been moved for, although he resides out of this district. *Woods et al.* v. *Young*, i. 346.
149. If the only resident member of a partnership who are plaintiffs, die pending the suit the defendant may demand security for costs against the remaining plaintiffs, and the Court will continue the cause to give the defendant an opportunity to lay the rule and give sixty days' notice. *Lambert* v. *Smith*, i. 347.
150. If the blanks in the declaration have been filled up at the trial term, and the defendant pleads with the knowledge that they have been so filled up, it is not a ground for the continuance of the cause. *Ibid.*
151. If the writ of inquiry be set aside at the trial term, the plaintiff is entitled to a continuance at the defendant's costs. *Beck* v. *Jones*, i. 347.
152. A resident of Alexandria, suing in Washington, must give security for costs. *Lovering* v. *Heard*, i. 349.

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153. Upon a petition for freedom the Court will not require the defendant to give security for the wages of the petitioner during the litigation. *Negro Ben* v. *Scott*, i. 350.
154. The costs of a continuance await the event of the cause, unless there be a special order to the contrary. An attachment will not lie for the non-payment of the costs of a continuance, until after a rule to show cause; nor unless there has been a personal service of the order of the Court to pay the costs; nor unless the bill of costs state the particular items. *Dyson* v. *White*, i. 359.
155. The Court will not sign a bill of exceptions which states that it contains all the evidence in the cause, unless, &c. *Lyles* v. *Mayor and Commonalty of Alexandria*, i. 361.
156. The Court will not grant an attachment against a party for not paying his witness unless payment has been demanded by a person having authority to receive payment; and the authority must appear. *Nally* v. *Lambell*, i. 365.
157. An affidavit is not necessary to continue a petition for freedom at the first term. *Negro Ben* v. *Scott*, i. 365.
158. The six months' stay upon a supersedeas is reckoned from the day of the confession of the new judgment. The sum confessed need not be repeated in the blank at the end of the supersedeas. *Hodgson* v. *Mountz*, i. 366.
159. This Court will issue a bench-warrant against a person charged with treason upon *ex parte* affidavits before any presentment or indictment made or found by a grand jury; and, when arrested, will commit him without stating when or where he is to answer for the offence. *United States* v. *Bollman et al.* i. 373.
160. An attachment for not returning a writ of *habeas corpus* will not be issued until three days shall have expired after service of the writ. *Ibid.*
161. Upon a motion to commit for trial, the party accused may be heard by counsel. *Ibid.*
162. In a chancery attachment, if the subpœna be served on the principal, the bill cannot be taken for confessed for non-appearance, as in ordinary cases in equity; but there must be an affidavit and publication, &c., according to the law of Virginia. *Dean* v. *Legg et al.* i. 392.
163. A material amendment of a bill, after answer, must be on payment of all costs, including the solicitor's fee. *Wallace* v. *Taylor et al.* i. 393.
164. The Court will not order the defendant's appearance to be stricken out so as to charge the marshal. *Wood* v. *Dickson*, i. 401.
165. Costs, on appeal from a justice of the peace are within the discretion of the Court if the judgment be affirmed in part. *Mead* v. *Scott*, i. 401.
166. The plaintiff will not be permitted to file his replication after the rule-day, and in term-time, but upon continuance of the cause. *Veitch* v. *Harbaugh*, i. 402.
167. The party upon whom the burden of proof is thrown by the issue is to open and close the argument. *Beall* v. *Newton*, i. 404; *Dunlop* v. *Peter*, i. 403.
168. When leave is given to amend on payment of costs, the payment is not a condition precedent, unless so specially expressed in the order. *Wigfield* v. *Dyer*, i. 403.
169. Upon the plea of performance the plaintiff is not bound to produce the original covenant. *Beall* v. *Newton*, i. 404.
170. The Court will not continue the cause, for the defendant, on the ground that his receipts are mislaid, unless the affidavit states the amount and dates of the receipts so that the plaintiff may admit or deny them; nor unless it state circumstances by which the Court can judge whether rea-

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sonable diligence has been used in searching for them. *Hide* v. *Liverse*, i. 408.
171. The Court will permit the prisoner to retract his plea of "guilty," in a capital case, and to plead "not guilty." *United States* v. *Dixon*, i. 414.
172. Upon the trial of the issue upon the plea of payment, the plaintiff is not bound to produce the bond. *Darlington* v. *Groverman*, i. 416.
173. After acquittal, the Court will not require the prisoner to give security for his good behavior. *United States* v. *Venable*, i. 417.
174. If the principal comes in and gives special bail, and sets aside the plea pleaded by the appearance-bail, the plaintiff is entitled to a continuance of the cause. *Wise* v. *Groverman*, i. 418.
175. A clerical mistake in entering the judgment, may be corrected at a subsequent term, and an execution, issued thereon, may be quashed. *Pierce* v. *Turner*, i. 433.
176. The Court will permit the defendant to withdraw the general issue, and file a general demurrer. *Deakins* v. *Lee*, i. 442.
177. The Court will not continue an action at law, on the motion of the defendant, on the ground that the plaintiff had not answered a bill of discovery, if the bill seek relief also. *Bennett* v. *Wilson*, i. 446.
178. The Court will grant a rule on a witness residing in Baltimore, to show cause why he should not be attached for not attending according to summons. *Hogdson* v. *Butts*, i. 447.
179. The Court will not permit the plaintiff to read to the jury his own statement of his account; nor will the Court permit the jury to take minutes of the items to which no evidence was offered. *Crease* v. *Parker*, i. 448.
180. The Court will not, on motion of the defendant, continue a cause because the costs of a *non pros* have not been paid. *Wheaton* v. *Love*, i. 451.
181. After judgment for the plaintiff on demurrer to a replication to the plea of limitations, the Court will not permit the defendant to withdraw the demurrer and rejoin specially, unless he can show, by affidavits, that it is necessary to the justice of the case. *Wilson* v. *Mandeville et al.* i. 452.
182. It is not necessary, upon a rule on a constable, to show cause why he should not be removed "for extortion under color of his office," that there should be any specification of the particular facts relied on. *Jones* v. *Woodwrow & Neale*, i. 455.
183. The Court will not order actions to be consolidated. *Bank of Alexandria* v. *Young*, i. 458.
184. A prison-bounds bond may be assigned by a deputy-marshal in Alexandria county. *Scott* v. *Wise*, i. 473.
185. If, after eight jurors have been sworn, the defendant challenge one for favor, the challenge shall be tried by the jurors already sworn. *Negro Reuben* v. *Bridges*, i. 477.
186. A juror shall not be examined on oath as to his religious opinions on the subject of slavery; nor will the Court, on a challenge for favor, suffer evidence to be given to the triers, as to the prevailing opinion of individuals of the religious sect to which the juror belongs. *Ibid.*
187. Notice to dissolve an injunction must be given ten days before the term. If given in term time, a term's notice is required. *Stoddert* v. *Waters*, i. 483.
188. A legal plaintiff has a right to dismiss a suit brought in his name by order of a person who claims to be his assignee; and the Court will not interfere to protect the assignee, unless the evidence of the assignment be clear. *Welch* v. *Mandeville*, i. 489.
189. In actions against executors, the statute of limitations may be pleaded after office-judgment. *Wilson* v. *Turberville*, i. 492.

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190. The Court will not give an instruction upon a point not material to the issue. *Harper* v. *Smith*, i. 495.
191. In Alexandria county, a *certiorari*, in "forcible entry and detainer," may be issued by one judge in vacation. *United States* v. *Browning*, i. 500.
192. In Alexandria, a set-off, or account in bar, must be filed one term before trial. *Janney* v. *Baggott*, i. 503.
193. Upon a presentment by the grand jury, the Court will order an indictment to be sent up, without the name of a prosecutor, upon the suggestion of the Attorney of the United States. *United States* v. *Dulany*, i. 510.
194. A copy will not be received as oyer, when a *profert* has been made of the original; and, if a copy is offered, the defendant may demur. *Wellford* v. *Miller*, i. 514.
195. Records, under the seals of the respective State courts, are admitted under the agreement of the bar, without other authentication. *Smallwood* v. *Violet*, i. 516.
196. The two jurors first sworn in the cause, are the proper triers of a challenge for favor. *Negro Clem Joice* v. *Alexander*, i. 528.
197. The Court will not permit counsel to argue to the triers upon a challenge for favor. *Ibid.*
198. The challenged juror cannot be examined as a witness to the triers. *Ibid.*
199. Witnesses may be separated and examined each out of hearing of the others. *Ibid.*
200. The Court will not lend an easy ear to the affidavits of jurors as to their proceedings after they have retired to consider of their verdict. *Cherry* v. *Sweeny*, i. 530.
201. After an appearance entered at a preceding term, it is too late to call for the authority to appear. *Rogers et al.* v. *Crommelin*, i. 536.
202. If books and papers are in Court, they may be called for after the jury is sworn. *Banks* v. *Miller*, i. 543.
203. If the Court is divided upon an objection to evidence, the objection does not prevail. *Henry* v. *Ricketts et al.* i. 545.
204. The Court will not permit the statute of limitations to be pleaded to an action of trespass for *mense profits*, after the rule-day, unless upon payment of all antecedent costs, and a continuance of the cause. *Marsteller* v. *McClean*, i. 550.
205. The fees of a magistrate, in another State, for taking a deposition under the act of Congress, may be taxed in the bill of costs, in Virginia. *Fry* v. *Yeaton*, i. 550.
206. After the rule to plead has expired, the Court will not compel the plaintiff to produce his cause of action. *Bailey* v. *Sutton et al.* i. 551.
207. A subscribing witness to a deed, may be compelled to attend Court to prove its execution, so that it may be recorded. *Irwin* v. *Dunlop*, i. 552.
208. If a juror, in a civil cause, be taken suddenly ill, the jury may be discharged, and the trial postponed until the next term. *Young* v. *Marine Ins. Co.* i. 566.
209. Two hour's notice of taking a deposition in Alexandria, where all the parties resided, was too short. *Jamieson* v. *Willis*, i. 566.
210. The Court will not permit a defendant to tender an issue to which he had demurred, when tendered by the plaintiff. *Hodgson* v. *Marine Ins. Co. of Alexandria*, i. 569.
211. At the hearing of a cause in chancery, the Court will not receive *vivâ voce* testimony, unless to prove exhibits. *Debutts* v. *Bacon*, i. 569.
212. When costs are given, on leave to amend, the payment of the costs is not a condition precedent. *Butts* v. *Chapman*, i. 570.
213. Upon a petition for freedom, the defendant may appear and disclaim with-

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out entering into the usual recognizance. *Negro Walter Thomas* v. *Scott*, ii. 2.
214. When the issue is joined on a matter of law, the Court will not, at the prayer of either party, instruct the jury upon the matter of law submitted to the jury by the pleadings. *Common Council of Alexandria* v. *Brockett*, ii. 13.
215. The plaintiff's counsel may fill up the blank indorsements at the trial, although the defendant indorsed the note for the accommodation of the maker. *Bank of the United States* v. *Roberts*, ii. 15.
216. See PLEADING, 61. *Sheehy* v. *Mandeville*, ii. 15.
217. See JUDGMENT, 33. *Short* v. *Wilkinson*, ii. 22.
218. See EVIDENCE, 221. *Davis* v. *Forrest*, ii. 23.
219. In replevin, if the title of the goods be in issue, the Court will grant a new trial if the jury give the plaintiff a verdict for the value of the goods as well as damages for taking them. *Thompson* v. *Carberry*, ii. 39.
220. Under the Maryland Act of 1798, c. 101, ch. 8, § 15, the Court, and not the jury, is to ascertain whether the defendant paid away all the assets before notice of the plaintiff's claim. *Hellen* v. *Beatty*, ii. 29.
221. See ATTACHMENT, 41. *Mott* v. *Smith*, ii. 33.
222. See BASTARD, 5. *United States* v. *Clements*, ii. 30; *United States* v. *Dick*, ii. 409.
223. If the defendant die after office-judgment and writ of inquiry awarded, his administrator cannot plead *plene administravit*, nor any other plea which the original plaintiff himself could not have pleaded. *Janney* v. *Mandeville*, ii. 31.
224. See LIMITATION, 16. *Thompson* v. *Afflick*, ii. 46.
225. Costs are not given in the Supreme Court on reversal. *Conway* v. *Alexander*, ii. 57.
226. An issue sent by the Orphans' Court to this Court, to try the validity of a will, cannot be removed to the other county, under the Act of June 24, 1812, § 8. *Carter* v. *Cutting*, ii. 58.
227. The marshal may justify appearance-bail at the second term after exception taken at the rules. *Brent* v. *Brashears*, ii. 59.
228. See AMERCEMENT, 2. *Williams* v. *Craven*, ii. 60.
229. Two or more counts for misdemeanor may be joined in one indictment. *United States* v. *Porter*, ii. 60.
230. Upon an indictment for barratry, no evidence can be given of specific acts without notice. *Ibid.*
231. Notice given after the commencement of the trial, is too late. *Ibid.*
232. See EVIDENCE, 237, 238, 239. *Ibid.*
233. The plaintiff having removed his family into the county of Washington, the rule to give security for costs was rescinded. *Nicholls* v. *Johns*, ii. 66.
234. The declarations of the assignor, made after the assignment of a chose in action, will not be received in evidence to defeat the action brought in his name. *Palmer* v. *Cassin*, ii. 66.
235. See LIMITATION, 19. *Beatty* v. *Van Ness*, ii. 67.
236. Witnesses may be removed while others are examined. *Patton* v. *Janney*, ii. 71.
237. One joint defendant in an action of assumpsit, cannot confess judgment so as to enable him to testify in behalf of the other defendants. *Ibid.*
238. See INSURANCE, 9, 10. *Ibid.*
239. See DEPOSITION, 26. *House* v. *Cash*, ii. 73.
240. See BILLS AND NOTES, 68. *Riddle* v. *Mott*, ii. 73.
241. See BAIL, 51. *Burns* v. *Simms's bail*, ii. 75.
242. See EVIDENCE, 247. *Underwood* v. *Huddleston*, ii. 76.

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243. *Id.* 250. *Curtiss* v. *Georgetown Turnpike Co.* ii. 81.
244. See PLEADING, 72. *Welch* v. *Mandeville*, ii. 82.
245. See BILLS AND NOTES, 69. *Underwood* v. *Huddleston*, ii. 93.
246. The Court will not reinstate a replevin which has been discontinued at a previous term. *Nicholls* v. *Hazel*, ii. 95.
247. An account for work and labor cannot be given in evidence at the trial upon *non assumpsit*, as a set-off, unless the account has been filed and notice given. *Whetcroft* v. *Burford*, ii. 96.
248. In Alexandria, an execution *de bonis propriis* is the proper process against an executor upon a decree in equity for the balance of his administration account. *Catlett* v. *Fairfax*, ii. 99.
249. The Court will not, upon motion, quash the return of a *fi. fa.* levied upon an equity of redemption. *Warfield* v. *Wirt*, ii. 102.
250. Trespass *vi et armis* will lie for a master against one who beats his slave, although there should be no loss of service. *Garey* v. *Johnson*, ii. 107.
251. See BAIL, 53. *Bussard* v. *Warner's bail*, ii. 111.
252. If the defendant be acquitted upon a flaw in the indictment, he will be remanded for trial at the next term. *United States* v. *Bennett Smith*, ii. 111.
253. See EQUITY, 116. *Grundy* v. *Young*, ii. 114.
254. See LIMITATION, 22. *Gregg* v. *Bontz*, ii. 115.
255. See ELECTION, 1. *Scholfield* v. *Union Bank*, ii. 115.
256. See BAIL, 54. *Jenkins* v. *Porter*, ii. 116.
257. *Id.* 55. *Craik* v. *Hilton*, ii. 116.
258. See JUDGMENT, 35. *Stone* v. *Stone*, ii. 119.
259. See EVIDENCE, 266, 267. *Holmead* v. *Corcoran*, ii. 119.
260. See LIMITATION, 24. *Jenkins* v. *Boyle*, ii. 120.
261. See BAIL, 56. *Sharpless* v. *Knowles*, ii. 129.
262. See JUDGMENT, 36. *Simpson* v. *Legg*, ii. 132.
263. See ADMINISTRATION, 13. *Adams* v. *Whiting*, ii. 132.
264. See GAMING, 12. *United States* v. *Rounsavel*, ii. 133.
265. See AMENDMENT, 26. *Comegyss* v. *Robb*, ii. 141.
366. See CIRCULATING MEDIUM. *United States* v. *Ray*, ii. 141.
367. See NEW TRIAL, 7. *United States* v. *Michael Clarke*, ii. 152.
368. A prisoner in execution for debt, at the suit of the United States, is entitled to the benefit of the prison-bounds upon giving sufficient security. *United States* v. *Anderson*, ii. 157.
269. See INSOLVENT, 30. *Mattingly* v. *Smith*, ii. 158.
270. *Id.* 31. *Keene* v. *Jackson*, ii. 166.
271. See LIMITATION, 27. *Irwin* v. *Henderson et al.* ii. 167.
272. See ASSIGNMENT, 10. *Weightman* v. *Queen*, ii. 172.
273. See BANK OF COLUMBIA, 1. *Okely* v. *Boyd*, ii. 176.
274. See BANK-NOTE, 7. *Armat* v. *Union Bank*, ii. 180.
275. See BILLS AND NOTES, 83. *Auld* v. *Peyton*, ii. 182.
276. *Id.* 82. *Munroe* v. *Mandeville*, ii. 187.
277. If the verdict be below the jurisdiction of the court, the jury is not entitled to the fee of twelve shillings. *Skinner* v. *McCaffrey*, ii. 193.
278. In covenant for rent, interest does not accrue until demand. *Wise* v. *Ressler*, ii. 199.
279. The attachment first served on the garnishee binds the effects in his hands, although the marshal has other and prior writs of attachment in his hands at the time of such service. *McCobb* v. *Tyler*, ii. 199.
280. The attachment first served is entitled to priority of payment. *Johnson* v. *Griffith*, ii. 199.
281. See APPEAL, 4. *Deneale's Executors* v. *Young*, ii. 200.
282. See LIMITATION, 29. *Scott* v. *Lewis*, ii. 203.

PRACTICE, (*continued.*)
283. See DAMAGES, 6. *Tayloe* v. *Turner*, ii. 203.
284. See AFFIDAVIT, 6. *Union Bank* v. *Riggs*, ii. 204.
285. See DISCONTINUANCE, 2. *Sherburne* v. *King*, ii. 205.
286. See ATTACHMENT, 52. *Sears* v. *Noon*, ii. 220.
287. See NEW TRIAL, 8. *Swann* v. *Bowie*, ii. 221.
288. See BY-LAW, 16. *Common Council* v. *Mandeville*, ii. 224.
289. See JOINT DEFENDANTS, 2. *Smith* v. *Woodward et al.* ii. 226.
290. After issue joined in replevin, it is too late to move to quash the writ. *Semb:* that the Act of Maryland which requires two sureties in replevin bonds is directory only; and that the writ is not void if there be only one surety. *Haller* v. *Beall*, ii. 227.
291. See EJECTMENT, 11. *McCormick* v. *Magruder*, ii. 227.
292. See JOINT DEFENDANTS, 3. *Edmondson* v. *Barrell*, ii. 228; *Nicholls* v. *Fearson*, ii. 526.
293. See EVIDENCE, 297. *Travers* v. *Appler*, ii. 234.
294. See BAIL, 58. *King* v. *Sim's bail*, ii. 234.
229. See COSTS, 32. *Roberts* v. *Reintzel*, ii. 235.
296. See JUDGMENT, 41, 42. *Union Bank* v. *Crittenden*, ii. 238.
297. *Id.* 43. *Bank of Washington* v. *Peltz*, ii. 241.
298. See ARBITRATION, 9. *Thornton* v. *Chapman*, ii. 244.
299. See LIMITATION, 31. *Mechanics Bank* v. *Lynn*, ii. 246.
300. *Quære*, whether an indictment will lie at common law for enticing away a slave. *United States* v. *Negro Pompey*, ii. 246.
301. See JURY, 41. *Darius Clagett's case*, ii. 247.
302. See EVIDENCE, 308. *United States* v. *Miller*, ii. 247.
303. See AMENDMENT, 27. *Tayloe* v. *Wharfield*, ii. 248.
304. See PLEADING, 85. *Darnall* v. *Talbot*, ii. 249.
305. See BILLS AND NOTES, 97, 98. *Bank of Washington* v. *Way*, ii. 249.
306. See BAIL, 59, 60. *Day* v. *Hackley*, ii 251.
307. See LIMITATION, 32. *Wetzel* v. *Bussard*, ii. 252.
308. See DEMURRER, 18. *Triplet* v. *Warfield*, ii. 237.
309. See BILLS AND NOTES, 99. *Brown* v. *Piatt*, ii. 253.
310. See JURISDICTION, 30. *Ritchie* v. *Stone*, ii. 258.
311. See DEPOSITION, 39. *Van Ness* v. *Heineke*, ii. 259.
312. See CONTINUANCE, 21. *Bestor* v. *Sardo*, ii. 260.
313. See CONSIDERATION, 10. *Munro* v. *Robertson*, ii. 262.
314. See BAIL, 61. *Ringgold* v. *Renner*, ii. 263.
315. The Court will, on affidavit, reinstate a cause *non-prossed* on a rule for security for costs laid on the plaintiff, who had no attorney in court, his attorney having died and no rule served on the plaintiff to employ new counsel. *Cook* v. *Beall*, ii. 264.
316. See DISCONTINUANCE, 3. *McCleod* v. *Gloyd*, ii. 264.
317. See BILLS AND NOTES, 100. *Bowie et al.* v. *Blacklock*, ii. 265.
318. See ELECTION, 3. *United States* v. *Columbia Ins. Co.* ii. 266.
319. See MANDAMUS, 4. *Ibid.*
320. See DISCONTINUANCE, 4. *Brent* v. *Coyle*, ii. 287.
321. See BILLS AND NOTES, 101. *Ibid.*
322. *Id.* 102. *Bank of Washington* v. *Reynolds*, ii. 289.
323. *Id.* 103. *Lapeyre et al.* v. *Gales*, ii. 291.
324. *Id.* 105. *Riggs* v. *Graeff*, ii. 298.
325. The security which a judge signing a citation on a writ of error which is to be a *supersedeas*, shall take, is to be for the costs and such damages as the Supreme Court may award for the delay. *Renner* v. *Bank of Columbia*, ii. 310.
326. See AMENDMENT, 28. *Boone* v. *Janney*, ii. 312.
327. See BILLS AND NOTES, 112. *Neale* v. *Peyton*, ii. 313.
328. *Id.* 113, 114. *Irwin* v. *Brown*, ii. 314.

PRACTICE. (*continued.*)
329. After the jury has retired to consider of their verdict, the Court will not instruct them upon any matter at the motion of either of the parties. If the jury asks for instruction upon any matter of law, the Court will give it. A motion in arrest of trial, and for a new trial, may be made at the same time; but the motion in arrest will be first heard. *Turner* v. *Foxall*, ii. 324.
330. See BAIL, 62. *Wormsley* v. *Beedle*, ii. 331.
331. If the plaintiff deliver his *fi. fa.* to the marshal, and die, and the marshal levy it on the goods of the defendant, he has a right, under the law of Virginia, to give a forthcoming bond, payable to the deceased creditor; and such bond will support a judgment upon motion of the administrator of the creditor. *Entwisle* v. *Bussard*, ii. 331.
332. See BILLS AND NOTES, 117. *Smith et al* v. *Glover*, ii. 334.
333. See BY-LAW, 18. *White* v. *Corporation of Washington*, ii. 337.
334. See COSTS, 36. *Wright* v. *Waters*, ii. 342.
335. The plaintiff cannot be nonsuited for not producing books and papers upon a mere notice by the defendant to produce them at the trial. There must be a motion to the Court for an order to produce them, and notice of such a motion, and an order of the Court; and if the motion be not made until the cause is called for trial at the last calling of the docket, the Court will continue the cause until the next term. *Bank of the United States* v. *Kurtz*, ii. 342.
336. See FREEDOM, 42. *Negro Matilda* v. *Mason*, ii. 343.
337. A motion for a new trial, or in arrest of judgment, is a waiver of the benefit of a stay of execution agreed upon by the parties. *Brent* v. *Coyle*, ii. 348.
338. See COSTS, 37. *Emerson* v. *Beale*, ii. 349.
339. See JUSTICE OF THE PEACE, 9. *Goulding* v. *Fenwick*, ii. 350.
340. See BILLS AND NOTES, 123. *Ott* v. *Jones*, ii. 351.
341. See LIMITATION, 34. *Offutt* v. *Hall*, ii. 363.
342. If the marshal, upon a *capias ad respondendum*, be amerced debt and costs *nisi*, the defendant may, at or before the next term, give bail and exonerate the marshal. *Heyer et al.* v. *Wilson*, ii. 369.
343. If the bill of exchange, which was the original cause of action, be lost, it is sufficient, in order to amerce the marshal in the whole amount of debt and costs, for not bringing in the defendant, arrested upon a *capias ad respondendum*, to tender to the marshal an assignment of the right of action upon the bill, and that assignment may be made by the attorney and agent of the plaintiff. *Ibid.*
344. See BILLS AND NOTES, 125. *Cana* v. *Friend*, ii. 370.
345. See JUDGMENT, 50. *Ault* v. *Elliot*, ii. 372.
346. This Court has authority to suspend an attorney from practice for a limited time, or to expel him entirely; and may, for that purpose, inquire in a summary manner, as to any charges of malpractice alleged against him. *Ex parte Levi S. Burr*, ii. 379.
347. See JUDGMENT, 51. *Holmes* v. *Bussard*, ii. 401; *McSherry* v. *Queen*, *Id.* 406; *Blagrove* v. *Ringgold*, *Id.* 407.
348. See JUSTICE OF THE PEACE, 12. *Minor's case*, ii. 404.
349. In all criminal prosecutions, the Attorney of the United States, upon the general issue, has the right to close the argument before the jury. *United States* v. *Bates*, ii. 405.
350. See COSTS, 40. *Blagrave* v. *Ringgold*, ii. 407.
351. See DISCONTINUANCE, 5. *Williamson* v. *Bryan*, ii. 407; *French* v. *Venable*, ii. 509.
352. See INSOLVENT, 37. *Frere* v. *Mudd*, ii. 407.
353. A cause in equity, in this Court, may be reheard if the petition for rehear-

PRACTICE (*continued.*)
ing be filed before the end of the next term after the final decree, and if no appeal lies to the Supreme Court in that cause. *Clarke* v. *Threlkeld*, ii. 408.
354. See JURISDICTION, 37. *United States* v. *Negro Ellick*, ii. 412.
355. See MISDEMEANOR, 8. *United States* v. *Carr*, ii. 439.
356. See DEPOSITION, 44. *Renner* v. *Howland*, ii. 441.
357. See EVIDENCE, 351. *Stuart* v. *Columbian Ins. Co.* ii. 442.
358. See INSOLVENT, 38, 39. *Connelly's case*, ii. 415.
359. If payment of a note be demanded and refused on the third day of grace, notice to the indorser on the next day is in due time. *Read* v. *Carbery*, ii. 419.
360. See ADMINISTRATION, 19. *Owen* v. *Blanchard*, ii. 418.
361. Unless notice of set-off be given before the suit is called for trial, it will not be permitted to be given in evidence upon *non assumpsit*. *Deneale* v. *Young*, ii. 418.
362. See DEPOSITION, 45. *Bussard* v. *Catalino*, ii. 421.
363. See JUSTICE OF THE PEACE, 17. *Adams* v. *Kincaid*, ii. 422.
364. See ATTACHMENT, 55. *Bolton* v. *White*, ii. 426.
365. See MARSHAL, 16. *Ringgold* v. *Glover*, ii. 427.
366. The Court will not quash a *fieri facias* issued after the death of the defendant, if it bear *teste* before his death. *Kane* v. *Love*, ii. 429.
367. See ADMINISTRATION, 21. *Calder* v. *Pyfer*, ii. 430.
368. Where there are contending assignees of a cause of action pending in Court, the Court will not, on motion, decide the merits of their respective claims, by ordering the action to be entered upon the docket as for the use of either of them. *Thomas* v. *Elliot*, ii. 432.
369. See BAIL, 65. *Ibid.*
370. See ATTACHMENT, 56. *Kurtz* v. *Jones*, ii. 433.
371. If the plaintiff examines his attorney as a witness, he waives his privilege, and, upon cross-examination, the attorney is bound to answer generally. *Crittenden* v. *Strother*, ii. 464.
372. After the jury is sworn to try the issue upon the allegations against the debtor, the Court will not admit the allegations to be amended by inserting the name of another creditor. *Walter Newton's case*, ii. 467.
373. The Court has a discretion, upon a motion to change the venue, and will not, in general, change it, unless the suggestion be accompanied by an affidavit, stating the grounds of belief that an impartial trial cannot be had in the county in which the suit is instituted. *Lewis* v. *Fire Insurance*, ii. 500.
374. The United States are entitled to judgment on revenue bonds at the return term, although, by the general rule and practice of the Court, the day after the last day of the term is the appearance-day to all writs returnable to that term; and the Court will, upon motion, rule the marshal to return the writ on some day during the term. *United States* v. *May & Snyder*, ii. 507.
375. See DISCONTINUANCE, 5. *French* v. *Venable*, ii. 509.
376. If the plaintiff has countermanded his execution, at the request of the defendant to give him time; or if he has been delayed by injunction obtained by the defendant; he may take out a new execution after the year and day. *Muncaster* v. *Mason*, ii. 521.
377. See EXECUTION, 26. *Owen et al.* v. *Glover*, ii. 522.
378. See ATTACHMENT, 58. *Baker* v. *Mix*, ii. 525.
379. *Id.* 59. *Jones* v. *Kemper*, ii. 535.
380. See DISCONTINUANCE, 6. *Nicholls* v. *Fearson*, ii. 526.
381. See BARON AND FEME, 9. *Semmes et ux.* v. *Sherburne*, ii. 534.
382. See ATTACHMENT, 59, 60, 61. *Jones* v. *Kemper*, ii. 535.

PRACTICE, (*continued.*)
383. If some of the terre-tenants named in the *scire facias* are returned *nihil* an *alias scire facias* must be issued against them, or the cause will be discontinued. *Semble*, that the *scire facias*, or its return, must describe the land held by each tenant. *Baker* v. *French et al.* ii. 539.
384. See EXECUTION, 29. *Offutt* v. *Henderson*, ii. 553.
385. If, after the jury is sworn and impanelled, it appears to be a case in which it is necessary to examine and determine upon accounts between the parties, the Court will order the jury to be discharged, and the accounts to be audited and stated by the auditor of the Court, according to the Maryland Act of 1785, c. 80, § 12; and that he report to the Court. *United States* v. *Rose*, ii. 567.
386. See BARON AND FEME, 10. *Robinson* v. *Cathcart*, ii. 590.
387. A warrant of commitment must be under the seal of the committing magistrate, and must show a charge upon oath. *Ex parte Bennett*, ii. 612.
388. See LIMITATION, 44. *Farmers Bank* v. *Melvin*, ii. 614.
389. A decree *nisi* upon default of appearance and answer to a bill in chancery, does not become absolute until the end of the term next succeeding that to which the decree shall be returned "executed." *Stewart* v. *Smith*, ii. 615.
390. See LIMITATION, 45. *Union Bank* v. *Eliason*, ii. 629.
391. See JOINT DEFENDANTS, 4. *Hyer et al.* v. *Hyatt & Wilson*, ii. 633.
392. No paper can be read in evidence to the jury without the leave of the Court. *Melvin* v. *Lackland*, ii. 636.
393. See DISCONTINUANCE, 9. *Riggs* v. *Chester*, ii. 637.
394. See LIMITATION, 46. *Union Bank* v. *Eliason*, ii. 667.
395. See ARBITRATION, 13–17. *Masterson* v. *Kinwell*, ii. 669.
396. See INSOLVENT, 52, 53. *Keirll* v. *McIntire*, ii. 670.
397. See APPEAL, 11. *Coumbe* v. *Nairn*, ii. 676.
398. *Id.* 12. *Cross* v. *Blandford*, ii. 677.
399. See EXECUTION, 31. *Johnson* v. *Glover*, ii. 678.
400. See ATTACHMENT, 74. *Homans* v. *Coombe*, ii. 681.
401. See JOINT DEFENDANTS, 5. *Newton* v. *Weaver*, ii. 685.
402. See BANK, 7, 8. *Union Bank* v. *Mackall*, ii. 695.
403. A variance between the *capias ad respondendum* and the declaration, is not a ground for arresting the judgment. *Wilson* v. *Berry*, ii. 707.
404. See AMENDMENT, 31, 32. *Bell* v. *Davis*, iii. 4.
405. *Id.* 33. *Kerr* v. *Force*, iii. 8.
406. See JUSTIFICATION, 25. *Ibid.*
407. See ATTACHMENT, 77. *Dowson* v. *Packard*, iii. 66.
408. See CORPORATION, 17. *Fowle* v. *Corporation of Alexandria*, iii. 70.
409. See CONTEMPT, 6. *United States* v. *Devaughan*, iii. 84.
410. See JURY, 51. *Ibid.*
411. See DISCONTINUANCE, 10. *Thompson* v. *Wells*, iii. 5.
412. *Id.* 11. *Mitchel* v. *Wilson*, iii. 92.
413. See INTEREST, 6. *Potomac Co.* v. *Union Bank*, iii. 101.
414. See ACCOUNT, 3–7. *Barry* v. *Barry*, iii. 120.
415. See CONTINUANCE, 23. *Higgs* v. *Heugh*, iii. 142.
416. See BAIL, 73. *McDaniel* v. *Riggs*, iii. 167.
417. See EVIDENCE, 417. *Patriotic Bank* v. *Coote*, iii. 169.
418. *Id.* 419. *Ibid.*
419. See BARON AND FEME, 11. *Hollenback* v. *Miller*, iii. 176.
420. See COSTS, 43. *Furlong* v. *Coleman*, iii. 178.
421. See EQUITY, 46. *Brent* v. *Venable*, iii. 227.
422. A prisoner arraigned for felony is to be placed in the criminal box, or dock at the time of arraignment, but need not hold up his hand when called, if he admits himself to be the person indicted. *United States* v. *Pittman*, iii. 289.

PRACTICE, (*continued.*)
423. See PLEADING, 123. *Fowle et al.* v. *Bowie*, iii. 291.
424. See ADMINISTRATION, 32. *Wise* v. *Getty*, iii. 292.
425. See BILLS AND NOTES, 179. *Bank of the United States* v. *Moore*, iii. 330.
426. If the plaintiff be a trustee, the Court will not permit him to become *non pros.* without the consent of the *cestui que trust* if the latter will give security to indemnify the plaintiff from costs. *Farmers and Mechanics Bank* v. *Gaither*, iii. 347.
427. See BOOKS, 7. *Macomber* v. *Clarke*, iii. 347.
428. See CONTINUANCE, 24. *Ibid.*
429. See APPEAL, 15. *Smith* v. *Chase*, iii. 348.
430. See CONTINUANCE, 25. *Fowle* v. *Bowie*, iii. 362.
431. When the plaintiff holds the affirmative of any of the issues in a cause, he has a right to open and close the whole case. Upon the plea of property in the defendant the plaintiff in replevin has the burden of proof, and the right to open and close. *Henderson* v. *Casteel*, iii. 365.
432. See ACCOUNT, 9. *Semmes* v. *Lee*, iii. 439.
433. See CHALLENGE, 210. *United States* v. *Watkins*, iii. 441.
434. See FALSE PRETENCES, 5, 18, 21, 24, 25. *Ibid.*
435. See ORPHANS' COURT, 20. *Carrico* v *Kerby*, iii. 594.
436. See AMENDMENT, 39. *Mandeville* v. *McDonald*, iii. 631.
437. See BOOKS, 8. *Triplett et al. Bank of Washington*, iii. 646.
438. The Court will not, at the trial, permit the defendant to amend his pleadings, unless they are satisfied of the justice of the defence intended to be made by the new pleas. *Allen* v. *Magruder*, iii. 6.
439. See ASSAULT AND BATTERY, 12. *Conner* v. *Cockerell et al.* iv. 3.
440. See JOINT DEFENDANTS, 9. *Bank of Columbia* v. *Hyatt et al.* iv. 38.
441. A tender of money upon condition of receiving change and a receipt in full for rent, is not a legal tender. *Perkins* v. *Beck*, iv. 68.
442. See CHESAPEAKE AND OHIO CANAL COMPANY, 8. *Chesapeake and Ohio Canal Company* v. *Binney*, iv. 68.
443. *Id.* 10. *Chesapeake and Ohio Canal Company* v. *Union Bank of Georgetown*, iv. 75.
444. See EQUITY, 76. *Bank of the United States* v. *Benning*, iv. 81.
445. See DEED, 10, 11, 12, 13. *Ibid.*
446. See COPY, 1. *Ibid.*
447. See INSOLVENT, 60. *McClean* v. *Plumsell*, iv. 86.
448. *Id.* 61. *Eckle* v. *Fitzgerald*, iv. 90.
449. See JUDGMENT, 85. *United States* v. *Askins*, iv. 98.
450. See JURY, 58. *Orme* v. *Pratt*, iv. 124.
451. See COSTS, 47. *Duvall* v. *Wright*, iv. 169.
452. See PLEADING, 139. *Ibid.*
453. See FREEDOM, 73. *Negro Kitty* v. *McPherson*, iv. 172.
454. In cases of felony the prisoner is to be arraigned in the criminal bar or dock. *United States* v. *Pettis*, iv. 186.
455. See DEPOSITION, 59. *Gustine* v. *Ringgold*, iv. 191.
456. See CLERKS, 5. *Ex parte E. J. Lee*, iv. 197.
457. See EVIDENCE, 468, 469. *United States* v. *Erskine*, iv. 299.
458. See APPRENTICE, 14. *Bell* v. *English*, iv. 332.
459. See BILLS AND NOTES, 197, 198. *Stettinius* v. *Myer*, iv. 349.
460. See EVIDENCE, 483. *Deale* v. *Krofft*, iv. 448.
461. The defendant cannot set off the plaintiff's acceptance of the defendant's draft, not due at the commencement of the suit, but due before plea pleaded; nor can it be allowed, as payment, on the general issue of *non assumpsit*. *Ibid.*
462. If the last indorser take up a draft when due, he may cancel the names of the prior indorsers without impairing his title to recover, as indorsee against the acceptor. *Ibid.*

PRACTICE, (*continued.*)
463. See LIEN, 17. *King et al.* v. *Shaw*, iv. 457.
464. See EQUITY, 90, 91. *Oliver* v. *Decatur*, iv. 458.
465. See ASSAULT AND BATTERY, 15. *United States* v. *H. Lloyd*, iv. 468.
466. See EVIDENCE, 488–493. *United States* v. *Woods*, iv. 484.
467. See ATTACHMENT, 92, 93, 94. *Negro Thornton* v. *Davis*, iv. 500.
468. A replevin discontinued at March term, 1834, by negligence of the clerk, was reinstated at March term, 1835. *McDermott* v. *Naylor*, iv. 527.
469. See BOOKS, 9, 10. *Walker* v. *Stewart*, iv. 532.
470. See JOINT DEFENDANTS, 12. *McCandless* v. *McCord*, iv. 533.
471. When a special session of the Court is ordered for the trial of criminal causes, the criminal causes pending at the preceding term cannot be continued to the special session, nor can any order be made therein at such special session. *United States* v. *Milburn*, iv. 552.
472. *Quære*, whether a new *capias ad respondendum* for a misdemeanor, can be issued while the party is in custody of his bail upon a former *capias* for the same offence; he having failed to appear according to the tenor of the recognizance of bail. *Ibid.*
473. See ATTACHMENT, 95. *Ex parte Gorman*, iv. 572.
474. See EXECUTION, 47. *Linthicum* v. *Jones*, iv. 572.
475. See EQUITY, 94. *Caldwell* v. *Walters*, iv. 577.
476. *Id.* 95. *Oliver* v. *Decatur*, iv. 592.
477. See JURY, 67–70. *United States* v. *Stockwell et al.* iv. 671.
478. *Id.* 71, 72. *United States* v. *Fenwick et al.* iv. 675.
479. See GUARANTY, 4, 5, 6. *Burns* v. *Semmes*, iv. 702.
480. See COSTS, 50. *Howe* v. *McDermott*, iv. 711.
481. In a criminal prosecution the Court will not hear a motion to quash the indictment until the defendant has been taken. *United States* v. *Taylor*, iv. 731.
482. When a statute creates an offence and directs the particular mode of prosecution, that mode must be pursued. *Ibid.*
483. See EVIDENCE, 529, 530, 532, 533, 535. *United States* v. *R. W. White*, v. 38.
484. See AMENDMENT, 46. *Suckley* v. *Slade*, v. 123.
485. See JUDGMENT, 103. *Bradley* v. *Eliot*, v. 293.
486. EJECTMENT, 15–18. *Worthington* v. *Etcheson*, v. 302.
487. See REPLEVIN, 56, 57, 58. *Walker* v. *Hunter*, v. 462.
488. See ATTACHMENT, 98. *Ten Broek* v. *Pendleton*, v. 464.
489. See AMENDMENT, 48. *Linthicum* v. *Remington*, v. 546.
490. See DEPOSITION, 64. *Leatherberry* v. *Radcliffe*, v. 550.
491. See EQUITY, 135. *Patriotic Bank* v. *Bank of Washington*, v. 602.
492. See FREEDOM, 103. *United States* v. *Thomas N. Davis*, v. 622.
493. See EQUITY, 136. *Roach* v. *Hulings*, v. 637.

PRETENSED TITLES.

See LANDS, 3. *Miller* v. *Young*, ii. 53.

PRISON-BOUNDS.

1. A prison-bounds bond may be assigned by a deputy marshal, in Alexandria. *Scott* v. *Wise*, i. 473.
2. Every prisoner not committed for treason or felony is entitled to the benefit of the prison-bounds, upon giving security. *United States* v. *Wise*, i. 546.
3. When a debtor is in the prison-bounds the Court will not award a *habeas corpus* to discharge him on the ground that his creditor has refused to pay his daily allowance. *Wilson* v. *Marshal of D. C.*, i. 608.
4. The Court will not, on motion, discharge a prisoner for debt who has the benefit of the prison-bounds, because the creditor refuses to pay the daily allowance. *Ex parte William Wilson*, ii. 7.

PRISON-BOUNDS, (*continued.*)
5. A prisoner in execution for debt at the suit of the United States is entitled to the benefit of the prison-bounds, upon giving sufficient security. *United States* v. *Anderson*, ii. 157.
6. See INSOLVENT, 50. *Owen et al.* v. *Glover*, ii. 578.
7. See EVIDENCE, 363. *Smoot* v. *Lee*, ii. 459.
8. If a debtor be taken on a *ca. sa.* in the District of Columbia, and give a prison-bounds bond, upon which also judgment has been rendered against him, he may be retaken upon the original *ca. sa.* after the expiration of a year from the date of the bond, and committed to close custody in execution. *Owen et al.* v. *Glover*, ii. 522.
9. See ESTOPPEL, 3. *Allen* v. *Magruder*, iii. 6.
10. See AMENDMENT, 40. *Ibid.*

PRIVILEGE.
1. A clerk of this Court is not entitled to sue by attachment of privilege. *Forrest* v. *Hauson*, i. 12.
2. See FOREIGN MINISTER, 1. *United States* v. *Lafontaine*, iv. 173.
3. See ASSAULT AND BATTERY, 13. *United States* v. *Samuel Houston*, iv. 261.
4. See FOREIGN MINISTER, 2. *United States* v. *Madison Jeffers*, iv. 704.

PROCESS.
1. A *capias* may be issued as the first process against a person for unlawful gaming. *United States* v. *Cottom*, i. 55.
2. A *capias* is proper process upon an indictment for misdemeanor, in Alexandria county. *United States* v. *Jamesson*, i. 62.
3. A *capias* is the proper process upon an indictment for misdemeanor, found after service of a summons to show cause why an indictment or information should not be filed. *United States* v. *Veitch*, i. 81.
4. After general appearance the defendant may plead in abatement that the *capias* was not properly served. *Knox* v. *Summers*, i. 260.

PROMISSORY NOTES.
See BILLS AND NOTES.

PROSECUTOR.
1. A prosecutor has no right to withdraw the prosecution without the consent of the Attorney of the United States. *Commonwealth* v. *Dulany*, i. 82.
2. The name of a prosecutor must be written at the foot of an indictment for keeping a bawdy-house. *United States* v. *Mary Rawlinson*, i. 83.
3. The want of the name of a prosecutor upon the indictment is no cause for arresting the judgment. *United States* v. *Singleton*, i. 237.
4. It is no ground of general demurrer to an indictment for a misdemeanor, under the laws of Virginia of 1792 and 1795, that the name of a prosecutor is not written at the foot of the indictment. *United States* v. *Sanford*, i. 323.
5. Upon presentment by the grand jury the Court will order an indictment to be sent up without the name of a prosecutor, upon the suggestion of the Attorney of the United States. *United States* v. *Dulany*, i. 510.
6. See INDICTMENT, 56. *United States* v. *Helriggle*, iii. 179; *United States* v. *Hollinsberry*, iii. 645.
7. See MISDEMEANOR, 10. *United States* v. *Shackelford*, iii. 287.
8. See JUDGMENT, 87. *United States* v. *Turley*, iv. 334.
9. See INDICTMENT, 80. *United States* v. *H. Lloyd*, iv. 467.
10. *Id.* 78, 464.

PUBLIC OFFICER.
1. *Quære*, whether the salary of a public officer of the United States is liable to attachment? *Averill* v. *Tucker*, ii. 544.
2. *Quære*, whether the treasurer of the United States can be compelled to

PUBLIC OFFICER, (*continued.*)
appear as garnishee, and is liable for money in his hands as treasurer? *Ibid.*
3. An agent for the payment of the salaries of the clerks in an executive department of the government of the United States is bound to appear as garnishee, when summoned. *Ibid.*
4. See JURISDICTION, 46. *Vass* v. *Comegyss*, ii. 564.
5. A public officer who receives money in advance for the contingencies of his office, is a receiver of public money within the meaning of the Act of Congress of March 3, 1797. *United States* v. *R. B. Lee*, ii. 462.
6. See BAIL, 103. *Davis* v. *Garland*, v. 570.

PUBLIC WORSHIP.
The disturbance of public worship is an act tending to destroy the public morals, and to a breach of the peace. It is a common injury to an indefinite number of persons, neither of whom could sue alone; it is, therefore, an indictable offence at common law. *United States* v. *John Brooks*, iv. 427.

PUNISHMENT.
When a statute merely alters the punishment of a common law offence, the statutory punishment may be inflicted, although the indictment does not conclude *contra formam statuti*. *United States* v. *Norris*, i. 411.

PURSER.
1. See ACCOUNT, 10. *United States* v. *Fitzgerald*, iv. 203.
2. The duties of a purser in the Navy stationed at a Navy-yard are not defined by law, and are to be ascertained by the jury. *Ibid.*
3. See EQUITY, 86. *Ibid.*
4. The pursers are bound by the regulations made by the Commissioners of the Navy in 1817, and are thereby bound to make the disbursements required without other compensation than their regular pay as pursers, unless there was an agreement or understanding between them and some officer of the United States competent to make such an agreement, that they should receive extra compensation therefor. *Ibid.*

QUO-WARRANTO.
See INFORMATION, 10, 11, 12. *Gunton et al.* v. *Ingle et al.* iv. 438.

RAILROAD.
See BALTIMORE AND OHIO RAILROAD COMPANY, 2, 3, 4, 5. *Baltimore and Ohio Railroad Company* v. *Van Ness*, iv. 595.

RAPE.
1. An attempt by a slave to ravish a white woman is punishable by death. *United States* v. *Negro Patrick*, ii. 66.
2. After the jury is sworn in a capital case, and the cause has been opened, the Court cannot, without the prisoner's consent, discharge a juror at his own request. *United States* v. *Negro Randall*, ii. 412.

RECEIVER.
1. See EQUITY, 90. *Oliver* v. *Decatur*, iv. 458.
2. *Id.* 98. *Dick* v. *Laird*, iv. 667.

RECOGNIZANCE.
1. If a witness appear according to his recognizance, and does not depart without the leave of the Court, he is not bound by that recognizance to appear at the next term, unless the recognizance be respited, although the cause should be continued. *United States* v. *Butler*, i. 422.
2. Upon a recognizance in a case of misdemeanor, the party is bound to appear on the first day of the term. *United States* v. *Hodgkin*, i. 510.
3. See JUDGMENT, 85. *United States* v. *Askins*, iv. 98.
4. See EVIDENCE, 468, 469. *United States* v. *Erskine*, iv. 299.

RECOGNIZANCE, (*continued.*)
5. See BAIL, 88. *United States* v. *Milburn*, iv. 478.
6. See FINE AND PENALTIES, 4. *United States* v. *Hilliard*, iv. 644.
7. After the term in which a recognizance has been forfeited, in a criminal case, the Court cannot remit the forfeiture; but the President of the United States can, under the Act of Congress. *United States* v. *Cookendorfer*, v. 113.
8. See BAIL, 95. *United States* v. *Richard H. White*, v. 368.

RECORD.
1. The record of a Court in Virginia must be certified by the presiding magistrate. *Gardner* v. *Lindo*, i. 78.
2. A clerical error may be corrected at the next term. *Ex parte Smith*, i. 127.
3. The Act of Congress respecting the authentication of the records of State Courts is not applicable to the records of the Courts of the United States. *Mason* v. *Lawrason*, i. 190.
4. A plea of the pendency of a prior suit in another Court must offer to produce the record of such suit. *Riddle* v. *Potter*, i. 288.
5. A record of a cause is the history of the proceedings in an action made out at full length, and in technical language, and when once made out and written in the record-book, the power of the clerk over it has ceased; it has become a public document and cannot be altered unless by the order of the Court under certain circumstances. *Barnes* v. *Lee*, i. 430, 471.
6. The plea of *nul tiel record* refers to the time of the plea pleaded, and is not affected by a subsequent amendment.
   A material variance between the record and the recital of it in the *scire facias*, is fatal. *Ibid.*
7. A clerical error in entering the judgment may be corrected at a subsequent term, and an execution issued thereon may be quashed. *Pierce* v. *Turner*, i. 433.
8. Records under the seals of the respective State Courts, are admitted under the agreement of the bar, without other authentication. *Smallwood* v. *Violett*, i. 516.

RE-ENTRY.
In ejectment upon re-entry for non payment of rent, the plaintiff need not show a title in fee, if he has been in possession 44 years; nor that there were not sufficient goods on the premises within the first thirty days, nor that he demanded the rent on the day it became due, nor on what part of a vacant town-lot the rent was demanded. *Cooke's Lessee* v. *Voss*, i. 25.

REGISTER OF THE TREASURY.
See AGENT, 17. *United States* v. *Nourse*, iv. 151.

RELEASE.
See NEGLIGNCE, 5. *Beltzhoover* v. *Stockton*, iv. 695.

RELIGIOUS SECT.
See DEVISE, 8, 9, 10. *Newton* v. *Carbery*, v. 632.

RENT.
1. See RE-ENTRY. *Cooke's Lessee* v. *Voss*, i. 25.
2. Goods in the hands of an officer under a distress for rent, may be attached by the same landlord for rent not yet due; and may be condemned, although replevied by the tenant after the attachment levied. *Herbert* v. *Ward*, i. 30.
3. An acceptance by the tenant, of a bill drawn on him by the landlord, for the rent, is not a bar to the distress, if the bill be not paid. *Alexander* v. *Turner*, i. 86.

RENT, (*continued.*)
4. Upon the plea of "no rent arrear," the tenant may give evidence of work done, and goods sold and delivered to the landlord, without notice of set-off. *Fendall* v. *Billy*, i. 87.
5. Under the Statute of Virginia, goods not upon the premises may be attached to secure rent not due. *Brockett* v. *Johns*, i. 100.
6. Upon a deed made in 1779, reserving an annual rent of £26 current money of Virginia, forever, the rents accruing during the existence of paper-money, are to be reduced according to the scale of depreciation. *Marsteller* v. *Faw*, i. 117.
7. If the landlord take the single bill of a third person for the amount of rent due by his tenant, and give time of payment to the third person until he fails, this is good evidence to support the plea of "no rent arrear." *Josse* v. *Shultz*, i. 135.
8. *Assumpsit* will not lie, at common law, on a parol demise. The Statute of 11 Geo. 2, c. 19, is not in force in Virginia. *Wise* v. *Decker*, i. 171.
9. In an action of covenant for rent, the landlord cannot recover interest. *Gill* v. *Patten*, i. 188.
10. In Virginia, an action for use and occupation will lie, although there be a parol demise for a time and rent certain, if the demise be waived, and there be a promise to pay for the time occupied. *Wise* v. *Decker*, i. 190.
11. In an action for use and occupation, the plaintiff can only recover for the time of actual occupation. *Carroll* v. *Finnagan*, i. 234.
12. Judgment in replevin for double rent. *Alexander* v. *Harns*, i. 243.
13. A lease for 99 years not acknowledged and recorded is not good for seven years, but is evidence of the rate of rent in an action for use and occupation. *Brohawn* v. *Van Ness*, i. 366.
14. The landlord may distrain after the death of the tenant. *McLaughlin* v. *Riggs*, i. 410.
15. Upon the issue of "no rent arrear," the landlord is not bound to prove that the distress was laid by his order. *Ibid.*
16. Property distrained for rent, may be transferred by the tenant to his creditors, subject to the lien for rent. *Cooke* v. *Neil*, i. 493.
17. Judgment, by motion, on notice, cannot be obtained on a bond given to secure rent, upon an attachment on the suggestion that the tenant is about to remove. *Simpson* v. *Legg*, ii. 132.
18. A distress for rent, laid on the last day of the term, at noon, is too soon. *Johnson* v. *Owens*, ii. 160.
19. The owner of a race-field, who knowingly lets it for the purpose of public races, and for booths and stands for the accommodation of licentious and disorderly persons for the purposes of unlawful gaming, and of gross immorality and debauchery, to the corruption of morals and manners, cannot recover the rent in an action of covenant. *Holmead* v. *Maddox*, ii. 161.
20. See ATTACHMENT, 44. *Keene* v. *Jackson*, ii. 166.
21. In covenant for rent, interest does not accrue until demand. *Wise* v. *Ressler*, ii. 199.
22. See EVIDENCE, 323. *Dorsey* v. *Chenault*, ii. 316.
23. Costs do not accrue upon levying a distress for rent, unless the goods are sold. *Wright* v. *Waters*, ii. 342.
24. Chairs left with a painter to be repaired are not liable for his rent. *Mauro* v. *Botelor*, ii. 372.
25. See DISCONTINUANCE, 5. *Williamson* v. *Bryan*, ii. 407.
26. See CONSTABLE, 8. *United States* v. *Eliz. Williams*, ii. 438.
27. See JUDGMENT, 53. *Ringgold* v. *Elliot*, ii. 462.
28. See DISCONTINUANCE, 5. *French* v. *Venable*, ii. 509.
29. In order to support an action upon a replevin bond, it is not necessary that

RENT, (*continued.*)
the defendant in replevin, who has recovered judgment against the plaintiff in replevin for damages and costs, should obtain a writ of *retorno habendo* returned "eloigned;" but the non-payment of the damages found by the jury, is a breach of the condition of the bond upon which an action may be maintained. *Moore* v. *Shields*, ii. 529.
30. A bailiff cannot lawfully force himself into a house by the outer door, (although partially opened by one within,) to make a distress for rent. *United States* v. *Stott*, ii. 552.
31. If a landlord draws an order on his tenant on account of rent, and the tenant accepts but does not pay it when due, and suffers himself to be sued for it by the payee, he is not entitled to set it off under the plea of "no rent arrear" in an action of replevin, if the landlord at the trial of the replevin produces the order cancelled, and offers to surrender it to the tenant, and to pay the costs of the suit brought upon it. *Arguelles* v. *Wood*, ii. 579.
32. If the jury find the amount of rent arrear, in damages, without stating it to be the amount of the rent, the Court will permit the verdict to be so amended by the clerk, after the jury have rendered their verdict and retired from the bar, and even after another cause has been tried: and upon such a verdict the Court will award a *retorno habendo;* and will not arrest the judgment because the jury have not found the value of the distress taken. *Ibid.*
33. See BAIL, 52. *Wager* v. *Lear*, ii. 92.
34. See EVICTION, 1. *McGunnigle* v. *Blake*, iii. 6.
35. Upon a parol lease for one year, at $600 per annum, and an occupation for two or more years, the plaintiff may recover for the whole time of occupation at that rate in a count upon *indebitatus assumpsit* for $1,000, although the use and occupation were not worth so much. *Dermott* v. *Tucker*, iii. 92.
36. See DAMAGES, 14, 15. *Wood* v. *May*, iii. 172.
37. See DISTRESS, 14, 15. *Jenkins* v. *Calvert*, iii. 216.
38. *Id.* 16. *King* v. *Fearson*, iii. 255.
39. See COVENANT, 6. *Scott* v. *Lunt*, iii. 285.
40. In an action for use and occupation, if the rent be payable quarterly, the plaintiff may recover rent to the end of the quarter preceding the eviction, but not for the part of the quarter during which the eviction was. The same principle applies when the rent is payable yearly. *Bank of Columbia* v. *Galloway*, iii. 353.
41. See DISTRESS, 20. *Law* v. *Stewart*, iii. 411.
42. *Id.* 21. *Beall* v. *Beck*, iii. 666.
43. The lessor's title ceased by a sale of the property. The tenant did not attorn, nor in any manner acknowledge himself to be tenant to the vendee, but continued to use and occupy the premises for five years after the sale, the vendee not having taken possession or demanded the rents. *Held*, that the lessor (the plaintiff,) could not recover from her tenant, in an action for use and occupation, the rent for the time he thus used and occupied the premises. *Betty Blake* v. *C. G. Grammer*, iv. 13.
44. The want of title in fee in the plaintiff, is no bar to an action for rent upon a lease for seven years, with leave to purchase the fee-simple within that term. *Crampton* v. *Van Ness*, iv. 350.
45. To enable a landlord to recover double rent for holding over, the lease must be for a specific term. A renting at sixty dollars a year, payable monthly, is not for a specific term, and will not authorize a judgment for double rent. *Nixdorff* v. *Wells*, iv. 350.
46. There can be no set-off against avowry for rent. *Roach* v. *Burgess*, iv. 449.

RENT, (*continued.*)
47. See DISTRESS, 23. *Baker* v. *Jeffers et al.* iv. 707.
48. See BILLS AND NOTES, 206. *Griffin* v. *Woodward*, iv. 709.
49. See ATTACHMENT, 91. *Calvert* v. *Stewart*, iv. 728.
50. See BILLS AND NOTES, 207. *Bank of the United States* v. *Fleet Smith*, iv. 712.
51. See EVIDENCE, 545. *Slacum* v. *Brown*, v. 315.
52. An assignment of rents with a power of attorney to collect them as they shall become due, is a valid assignment in equity, although the assignor should die before they are collected. *Taylor* v. *Moore's Administrator*, v. 317.
53. See DISTRESS, 31. *Remington* v. *Linthicum*, v. 345.
54. See LEASE, 6. *Bradlay* v. *Conner*, v. 615.

RENTS AND PROFITS.
1. See DEED, 18. *Kurtz* v. *Hollingshead*, iv. 180.
2. The only cases in which the Court has permitted the heirs of a deceased debtor to have the rents and profits until the sale of real estate, sold to pay the debts of the ancestor, are cases of sale under the Act of Maryland for deficiency of personal assets. *Bank of the United States* v. *Peter*, v. 485.
3. See EQUITY, 132. *Markoe* v. *Coxe*, v. 537.
4. See DISTRESS, 26. *Semmes* v. *McKnight*, v. 539.
5. See EQUITY, 145. *Ritchie* v. *Bank of the United States*, v. 605.

REPLEVIN.
1. See RENT, 2. *Herbert* v. *Ward*, i. 30.
2. *Id.* 7. *Josse* v. *Shultz*, i. 135.
3. Actions of replevin in Alexandria, may be tried at the first term. *Wilson* v. *Johnston*, i. 198.
4. After plea of "property in the defendant," the Court will permit the defendant to plead "property in a stranger," on payment of all antecedent costs and a continuance if requested. *Semmes* v. *O'Neale*, i. 246.
5. See RENT, 14, 15. *McLaughlin* v. *Riggs*, i. 410.
6. The Act of Maryland, 1785, c. 34, which forbids the replevin of goods distrained for public dues, is not applicable to the corporation-taxes of the city of Washington. *Carroll* v. *Whetcroft*, i. 609.
7. The marshal's commission of 5 per cent. may be included in the replevy-bond for rent in Alexandria county. *Alexander* v. *Thomas*, i. 92.
8. Upon the issue of "no rent arrear," the plaintiff in replevin will not be permitted to show that the defendant had nothing in the tenements. *White* v. *Cross*, ii. 17.
9. An assignment by the lessor during the term does not, without attornment, prevent the lessor from distraining. *Ibid.*
10. In replevin for goods distrained for rent, the defendant cannot give evidence of the value of the use and occupation. *Ibid.*
11. In replevin, if the title of the goods be in issue, the Court will grant a new trial if the jury give the defendant a verdict for the value of the goods, as well as damages for taking them. *Thompson* v. *Carbery*, ii. 39.
12. If A. replevies from B., who had replevied from A., the Court will quash the second replevin, and upon a motion made for the return of the property in the first replevin, will order it to remain with the person who appears to have the right of possession according to the Maryland law of 1785, c. 80, § 14. *Birch* v. *Gittings*, ii. 66.
13. In debt on a replevin-bond, the Court refused to require special bail. *Jenkins* v. *Porter*, ii. 116.
14. See RENT, 18. *Johnson* v. *Owens*, ii. 160.

REPLEVIN, (*continued.*)

15. The Court will not, at a subsequent term, reinstate an action of replevin which had been *non-prossed* on a rule to declare. *McDaniel* v. *Fish*, ii. 160.
16. In an action upon a replevin-bond, it seems that the defendant may, in mitigation of damages, give evidence of fraud, by which the defendant was cheated by the plaintiff and others in playing at cards, whereby the plaintiff won the defendant's mare, which was the subject of the replevin. *Ibid.*
17. *Quære*, whether a replevin-bond is sufficient with only one surety? Whether the law of Maryland respecting replevins for property distrained for taxes, is applicable to replevins for property distrained for corporation taxes? Whether property distrained for city taxes, by a city collector, is in the custody of the law, and thereby protected against replevins? *Orr* v. *Ingle*, ii. 193.
18. See DISCONTINUANCE, 2. *Sherburne* v. *King*, ii. 205.
19. After issue joined, it is too late to move to quash the writ. *Semble:* That the Act of Maryland, which requires two sureties in replevin-bonds, is directory only, and that the writ is not void, if there be only one surety. *Haller* v. *Beall*, ii. 227.
20. See EVIDENCE, 303. *Wise* v. *Bowen*, ii. 239.
21. See DISCONTINUANCE, 3. *McCleod* v. *Gloyd*, ii. 264.
22. It is not necessary to the validity of a replevin-bond, that the plaintiff should be bound in the bond. *Wood* v. *Forrest*, ii. 303.
23. See EVIDENCE, 323. *Dorsey* v. *Chenault*, ii. 316.
24. See DISCONTINUANCE, 1. *Nicholls* v. *Hazel*, ii. 95.
25. A judgment for the defendant in replevin without a declaration, is irregular, and will, on motion, be set aside, even at a subsequent term. *Ringgold* v. *Elliot*, ii. 462.
26. If the defendant in replevin be the bailiff of the landlord, and be indemnified by him, he may be examined as a witness in the cause. *Quære.* *Dixon* v. *Waters*, ii. 527.
27. See DISCONTINUANCE, 10. *Thompson* v. *Wells*, iii. 5.
28. See DAMAGES, 12. *Smith* v. *Hazel*, iii. 55.
29. See DISCONTINUANCE, 11. *Mitchel* v. *Wilson*, iii. 92.
30. See PLEADING, 119. *Wood* v. *Franklin*, iii. 115.
31. See DAMAGES, 14, 15. *Wood* v. *May*, iii. 172.
32. See DISTRESS, 14, 15. *Jenkins* v. *Calvert*, iii. 216.
33. See DEED, 7, 8. *Mitchel* v. *Wilson*, iii. 242.
34. See DAMAGES, 16. *Ringgold* v. *Bacon*, iii. 257.
35. See FRAUD, 35, 36. *Travers* v. *Ramsay*, iii. 354.
36. See JURISDICTION, 56. *Smith* v. *Billing*, iii. 355.
37. See PRACTICE, 431. *Henderson* v. *Casteel*, iii. 365.
38. In replevin, the Court will, on motion, order a return of the property to the defendant, a constable, who had taken it in execution upon a judgment against a third person, unless it shall appear to the Court that the possession was obtained by the defendant forcibly or fraudulently; or, that the possession, being first in the plaintiff, was obtained by the defendant without proper authority, or right derived from the plaintiff. *Greenwell* v. *Botelor*, iii. 7.
39. See DISTRESS, 17, 18, 19. *Ross* v. *Holtzman*, iii. 391.
40. See FRAUD, 35. *Moore* v. *Ringgold*, iii. 434.
41. See PLEADING, 133. *Rotchford* v. *Meade*, iii. 650.
42. See DISTRESS, 21. *Beall* v. *Beck*, iii. 666.
43. See EVIDENCE, 449. *Williamson* v. *Ringgold*, iv. 39.
44. See EXECUTION, 40. *Ibid.*
45. See EVIDENCE, 458. *Hilton* v. *Beck*, iv. 107.

REPLEVIN, (*continued.*)
46. See EVIDENCE, 467. *Semmes* v. *Sprigg*, iv. 292.
47. *Id.* 477. *Hungerford* v. *Burr*, iv. 349.
48. See DISCONTINUANCE, 12. *McDermott* v. *Naylor*, iv. 527.
49. See PLEADING, 143. *Greer* v. *Nourse*, iv. 527.
50. See BILLS AND NOTES, 206. *Griffin* v. *Woodward*, iv. 709.
51. See ATTACHMENT, 91. *Calvert* v. *Stewart*, iv. 728.
52. Papers which have been filed in the proper accounting office of the Treasury of the United States, as vouchers or documents to justify the settlement of a public account, are not liable to be taken from the public officer by replevin. *W. L. Brent* v. *Peter Hagner*, v. 71.
53. See DISTRESS, 31. *Remington* v. *Linthicum*, v. 345.
54. See EXECUTION, 56. *Gaylor* v. *Dyer*, v. 461.
55. See CONSTABLE, 14. *Brent* v. *Beck*, v. 461.
56. The Court will not, in replevin, order a *non pros.* at the motion of the defendant, after the jury is sworn. *Walker* v. *Hunter*, v. 462.
57. In replevin, the plaintiff may recover according to the extent of his title proved. *Ibid.*
58. Form of a verdict when the plaintiff proves a title to a part only of the goods replevied. *Ibid.*
59. See EVIDENCE, 560. *Lenox* v. *Gorman*, v. 531.
60. See POSSESSION, 6. *Emack* v. *Crabb*, v. 611.
61. Upon a replevin-bond, the plaintiff may recover, although there has been no judgment for a return of the property; but the plaintiff must show that he has sustained damage by the failure of the plaintiff in replevin to prosecute his writ with effect. *Burch* v. *Dowling*, v. 646.
62. See DAMAGES, 30. *Hemstead* v. *Colburn*, v. 655.

RETAILER.
See BY-LAW, 54. *Corporation of Washington* v. *Casanave*, v. 500.

RIOT.
1. To constitute a riot, it is not necessary that the unlawful intention should have existed at the time of meeting; but if, having met for a lawful purpose, the unlawful intention be afterwards formed and executed, it is sufficient; and the unlawful act is evidence of the unlawful intent. *United States* v. *McFarlane et al.* i. 140.
2. Riots are punishable at common law, notwithstanding the statute. *Id.* 163.
3. Riot, and assault and battery, may be joined in the same indictment. *Ibid.*
4. Imprisonment is not a necessary part of the punishment of riot at common law. *Ibid.*
5. The defendant's witnesses, who were engaged in the riot, were not permitted to give evidence of their intention in meeting. *United States* v. *Dunn et al.* i. 165.
6. See JUDGMENT, 91. *United States* v. *Peaco et al.* iv. 601.
7. See JURY, 67 – 70. *United States* v. *Stockwell et al.* iv. 671.
8. *Id.* 71, 72. *United States* v. *Fenwick et al.* iv. 675.

ROAD.
1. No road in Virginia is a highway, within the statute which takes away the benefit of clergy in certain cases, unless it be a public road laid out according to law; no evidence of which can be received but the record. *United States* v. *King*, i. 444.
2. The obstruction of a way laid out for the accommodation of certain lots by the original proprietor thereof, and not as a common highway, is not properly the subject of indictment; and the circumstance that the public might pass over a road, does not make it a public road; although laid off and dedicated by the original owner of the land as a public road, and ever since used as such. *United States* v. *Conrad Schwarz*, iv. 160.
3. There can be no public road in the County of Washington, D. C., out of

ROAD, (*continued.*)
the cities and towns, unless it be recorded in this Court or the Levy Court. *Ibid.*
4. The road from Georgetown, D. C., to the Little Falls bridge, is not a public highway, because the location thereof was not recorded among the records of the territory of Columbia. *United States* v. *Emery*, iv. 270.
5. The Act of Maryland, 1785, c. 49, respecting private roads or ways, is not repugnant to the Constitution of the United States, and is in force in the county of Washington. *Barnard et al.* v. *Petitioners, &c.* iv. 294.

ROCK CREEK.
See CHESAPEAKE AND OHIO CANAL, 22. *Chesapeake and Ohio Canal Co.* v. *Union Bank*, v. 509.

ROBBERY.
1. See ROAD, 1. *United States* v. *King*, i. 444.
2. To constitute robbery there must be fear or force. *United States* v. *Negro Henry Simms*, iv. 618.
3. See JUSTICE OF THE PEACE, 54. *Ibid.*
4. See JOINT DEFENDANTS, 15. *United States* v. *Campbell & Turner*, iv. 658.

RUNAWAY.
1. A justice of the peace, in Alexandria, cannot commit a person as a runaway, unless according to the form of the Act of Virginia of December 26, 1792, p. 246. *Ex parte Negro Anthony*, i. 295.
2. See FREEDOM, 95. *Runaways and Petitioners for Freedom*, iv. 489.
3. In an indictment under the Maryland law, 1796, c. 67, § 19, for assisting by advice the transporting of a slave, whereby the owner was deprived of his services, it is not necessary to state what the advice was; nor how it assisted him; nor is it necessary to state a criminal intent, nor that the accused knew he was a slave, and intended to run away. *United States* v. *Abraham Johnson*, iv. 303.
4. A warrant of commitment of a person as a runaway, is not sufficient, unless it state on its face that the party has been convicted of being a runaway servant or slave. It is not sufficient to state in the warrant that the party is "charged with being a runaway." *William Richardson's case*, v. 338.
5. *Quære.* Whether the old laws of Maryland respecting runaways are applicable to this part of the District of Columbia? *Ibid.*

SALE.
1. The vendee of a slave, cannot, in an action for money had and received, recover the purchase-money, upon a defect of title, without offering to return the slave; nor if there was an express warranty of title under seal. *Gunnell* v. *Dade*, i. 427.
2. An agreement to sell and transfer goods seized and held as a distress for rent due by the vendor, will transfer the general property so as to enable the vendee to maintain trover after the goods have been replevied. *Cooke* v. *Woodrow*, i. 437.
3. When bills are drawn on a consignee upon a shipment of tobacco, he has no right to hold up the tobacco after the time of payment of the bills, without orders, but should sell to meet the payment of the bills. *Potts* v. *Finley et al.* i. 514.
4. See LIEN, 10. *Strider* v. *King*, iii. 67.
5. See DESCENTS. *Tolmie* v. *Thompson*, iii. 123.
6. See ESTOPPEL, 4. *Corcoran* v. *Brown et al.* iii. 143.
7. If a purchaser of lots at a sale under a decree of this court, neglects to pay the purchase-money, and suffers them to be sold for taxes, the Court will, upon the petition of the trustee, order so much of the property to be re-

SALE, (*continued.*)
sold as will pay the taxes and redeem the residue. *Hearne* v. *Barry*, iii. 168.
8. See BILLS AND NOTES, 175. *Magner* v. *Johnston*, iii. 249.
9. See EQUITY, 51. *Hastings* v. *Granberry*, iii. 319.
10. See ASSETS, 3. *Law* v. *Law*, iii. 324.
11. See EQUITY, 55 – 59. *Hayman* v. *Keally et al.* iii. 325.
12. See LIMITATION, 53. *Reardon* v. *Miller*, iii. 344.
13. See FRAUD, 35, 36. *Travers* v. *Ramsay*, iii. 354.
14. See EQUITY, 69. *Bank of Columbia* v. *Dunlop*, iii. 414.
15. *Id.* 70. *Litle* v. *Ott*, iii. 416.
16. A vendor of a city lot in August, is not liable to the vendee for taxes for that year, not assessed until November, and not payable until the 1st of January following. *Hunt* v. *Smith*, iii. 432.
17. See FRAUD, 39. *Cushwa* v. *Forrest*, iv. 37.
18. In 1828 city lots in Washington could not be sold for taxes due to the corporation if there was personal property upon them sufficient to pay the taxes. The charter of 1820 was the only authority under which such lots could be sold; and that charter does not, in such case, authorize the sale of the lots by the collector, even with the consent of the person to whom they are assessed, or even with the assent of the true owner. The collector could not sell the fee-simple if the tenant was only tenant for life, and if the estate for life was of sufficient value to pay the taxes. *Quære*, whether the tenant, in whose name a lot is assessed, can, by suffering the taxes to accumulate, and by purchasing in the lot at a collector's sale for his own default, get a better title than he had before? *Hellrigle* v. *Ould*, iv. 72.
19. See BY-LAW, 28, 29. *Corporation of Georgetown* v. *Smith*, iv. 91.
20. See CONTRACT, 34, 35, 36. *Arden* v. *Brown*, iv. 121.
21. See CORPORATION OF GEORGETOWN, 1. *Corporation of Georgetown* v. *Bank of the United States*, iv. 176.
22. See DEED, 16 – 19. *Kurtz* v. *Hollingshead*, iv. 180.
23. See ADMINISTRATION, 35. *Ex parte Jones*, iv. 185.
24. See EJECTMENT, 14. *Waters et al.* v. *Butler*, iv. 371.
25. See CORPORATION OF WASHINGTON, 29, 30. *Rodbird* v. *Rodbird*, v. 125.
26. See BILLS AND NOTES, 213 – 216. *Semmes* v. *Wilson*, v. 285.
27. If a lot of bacon be advertized in the Gazette, by the vendor, "as prime," and the vendee examine it, and afterward agree to purchase it, and it proves to be unsound, he cannot recover damages upon the warranty, although he should have paid a sound price for it. *McVeigh* v. *Messersmith*, v. 316.
28. See BANK, 28. *Guttschlick* v. *Bank of the Metropolis*, v. 435.
29. See EJECTMENT, 19. *Costigan* v. *Wood*, v. 507.
30. See DECREE, 5. *Carroll* v. *Dowson*, v. 514.
31. See CORPORATION OF WASHINGTON, 38. *Mockbee* v. *Upperman*, v. 535.
32. See RENTS AND PROFITS, 2. *Bank of the United States* v. *Peter*, v. 485.
33. See BILLS AND NOTES, 220. *Smith* v. *Arden*, v. 485.
34. See EQUITY, 132. *Markoe* v. *Coxe*, v. 537.
35. See DISTRESS, 26 – 30. *Semmes* v. *McKnight*, v. 539.
36. See EQUITY, 145. *Ritchie* v *Bank of the United States*, v. 605.
37. See EJECTMENT, 26. *Wilkes* v. *Elliot*, v. 611.
38. See LEASE, 6. *Bradlay* v. *Conner*, v. 615.
39. See EXECUTION, 51. *Bowen* v. *Howord*, v. 308.
40. See FREEDOM, 102. *Corcoran* v. *Jones*, v. 607.

SCIRE FACIAS.
1. If the defendant appear to a *scire facias*, it is immaterial by whom the writ was served. *Gadsby* v. *Miller*, i. 39.

SCIRE FACIAS, (*continued.*)
2. Where two become bail jointly and severally, and two writs of *scire facias* are issued, and one of the bail surrenders the principal, he must pay the costs of both writs. *Pennigton* v. *Thornton*, i. 101.
3. After a year has elapsed, execution cannot issue here upon a judgment in Maryland without a *scire facias*, notwithstanding the thirteenth section of the Act of Congress of the 27th of February, 1801. *McDonald* v. *White*, i. 149.
4. Bail will not be discharged by a surrender of the principal, or the production of his discharge as an insolvent debtor, at the third term after the return of the *scire facias*. *Bowyer* v. *Herty*, i. 251.
5. When an execution is countermanded at the request of the defendant and for his accommodation, the plaintiff may have a new execution after the year and day, without *scire facias*. *Phillips* v. *Lowndes*, i. 283.
6. See EXECUTION, 33. *Veitch et al.* v. *Farmers Bank*, iii. 81.
7. *Id.* 37. *Ott* v. *Murray*, iii. 323.
8. See AMENDMENT, 36. *Brown* v. *Gilles*, iii. 363.
9. *Id.* 39. *Mandeville* v. *McDonald*, iii. 631.
10. See JUDGMENT, 95 – 98. *Jackson* v. *Bank of the United States*, v. 1.

SEAMEN.
1. An assault and battery by a seaman upon the master of a vessel does not amount to a confinement of the master, nor to an attempt to excite a revolt, within the Act of Congress. *United States* v. *Lawrence*, i. 94.
2. A ship lying in Baltimore is liable for the wages of a seaman hired for a voyage not prosecuted. *Lovering* v. *Bank of Columbia*, i. 152.
3. *Quære*, whether the authority to commit a seaman for deserting his ship, is not limited to a justice of the peace? *Ex parte Sprout, et al.* i. 424.
4. A voyage is not ended until the cargo and ballast are discharged. *Ibid.*

SEDUCTION.
See EVIDENCE, 402, 403. *Mudd* v. *Clements*, iii. 3.

SELLING LIQUORS.
1. The day, in an indictment for selling whiskey, is not material. *United States* v. *Burch*, i. 36.
2. A servant selling liquors for his master without license is not liable to the penalty. *United States* v. *Paxton*, i. 44; *United States* v. *Shuck*, i. 56.
3. All the acts of selling spirituous liquors without license, before conviction, constitute but one offence; and the day laid in the information is not material if it be within twelve months before filing the information. *Commonwealth* v. *Smith*, i. 46; *United States* v. *Gordon*, i. 58, 81.
4. In an information for selling spirituous liquors without license, it is not necessary to specify the kind of liquor, nor the person to whom sold. *United States* v. *Gordon*, i. 58.
5. Upon an indictment for retailing spirituous liquors, the informer is not entitled to half of the penalty, and is a competent witness. *United States* v. *Voss*, i. 101.
6. Selling less than a pint under a license to sell not less than a pint, is selling without license. *United States* v. *Squaugh*, i. 174.
7. The practice of selling liquors, in a public manner, to negroes assembled in considerable numbers, and suffering them to drink the same in or about the house on a Sabbath day, constitute the offence of keeping a disorderly house. *United States* v. *Lindsay*, i. 245; *United States* v. *Prout*, i. 203; *United States* v. *Coulter*, i. 203.
8. A tavern-keeper in Virginia could not, under the Act of December 26th, 1792, § 13, recover more than five dollars for liquors sold, in one year, to a boarder, to be drank in or about the house. *Koones* v. *Thomee*, i. 290.

SELLING LIQUORS, (*continued.*)
9. A selling by the wife with the consent of the husband is a selling by the husband. The day is not material. *United States* v. *Burch*, i. 571.
10. See SPIRITUOUS LIQUORS. *United States* v. *Dixon*, ii. 92.

SENTENCE.
1. See JUDGMENT, 101. *United States* v. *Hastings*, v. 115.
2. If a man be convicted of a second offence while in the penitentiary under the first, the sentence for the second may be made to commence from the expiration or other termination of the period for which he was first sentenced. *United States* v. *Negro Jo Farrell*, v. 311.

SERVANT.
1. See SELLING LIQUORS, 2. *United States* v. *Paxton*, i. 44; *United States* v. *Shuck*, i. 56.
2. A contract made in this county does not create such a relation of master and servant as will authorize a justice of the peace to compel specific service, and to inflict stripes for disobedience, under the Virginia law of the 26th of December, 1792, but may give the master such a right to the service as will enable him to recover damages for enticing away the servant. *Milburne* v. *Byrne*, i. 239.
3. In assault and battery for beating the plaintiff's servant, *per quod*, &c. the plaintiff cannot recover without evidence of loss of service. *Voss* v. *Howard*, i. 251.

SET-OFF.
1. The defendant cannot set off a joint judgment recovered by himself and wife, (for slander of the wife) against the plaintiff. *Sutton* v. *Mandeville*, i. 2.
2. See RENT, 4. *Fendall* v. *Billy*, i. 87.
3. Damages for use and occupation may be set off. *Brohawn* v. *Van Ness*, i. 366.
4. A defendant, under the bankrupt law, cannot set off a debt due to him by a partnership against a claim by the assignee of one of the firm who became bankrupt. *Oxley* v. *Tucker*, i. 419.
5. A bond due by the bankrupt to the defendant cannot be set off against the defendant's note to a third person assigned to the assignee of the bankrupt's effects after commission issued. *McIver* v. *Wilson*, i. 423.
6. A set-off, or account in bar must be filed one term before trial, in Alexandria. *Janney* v. *Baggott*, i. 503.
7. In an action, by an insolvent debtor, for the use of his trustee, the defendant may set off the plaintiff's note to a third person with a blank indorsement, which came to the defendant's hands before the plaintiff's insolvency; but he cannot set off a joint debt of the plaintiff and another. *Banks* v. *King*, i. 543.
8. Unliquidated damages for breach of warranty of the soundness of a horse, cannot be set off against a note given for the purchase of the horse. *Morrison* v. *Clifford*, i. 585.
9. In an action by the indorsee against the maker of a promissory note, in Alexandria county, the defendant may set off the payee's note to him which he held before, and at the time he had notice of the assignment of his own note to the plaintiff, although not then payable, but becoming payable before his own note. *Stewort* v. *Anderson*, i. 586.
10. Unliquidated damages arising from the non-performance of a verbal promise to convey real estate, made without consideration, and under a mistake of fact, cannot, in equity be set off against a judgment at law. *Lee* v. *Thornton et al.* i. 589.
11. The defendant cannot set off a separate debt of one partner against a partnership claim. *Lynn* v. *Hall*, ii. 52.
12. An account for work and labor cannot, at the trial, be given in evidence

SET-OFF, (*continued.*)
upon *non assumpsit* as a set-off unless the account has been filed and notice given. *Whetcroft* v. *Burford*, ii. 96.
13. See ASSIGNMENT, 10. *Weightman* v. *Queen*, ii. 172.
14. A debt due by the plaintiff to one of two joint defendants cannot be set off against the joint debt due to the plaintiff. *Waters* v. *Bussard*, ii. 226.
15. See ASSIGNMENT, 11. *Gardner et al.* v. *Tennison*, ii. 338.
16. Unless notice of set-off be given before the suit is called for trial, it cannot be given in evidence. *Deneale* v. *Young*, ii. 418.
17. A claim which has been pleaded, or offered in evidence as a set-off, and rejected by the verdict of the jury, will not maintain an action. *Janney* v. *Smith*, ii. 499.
18. See BANK OF WASHINGTON, 1. *Brent* v. *Bank of Washington*, ii. 517.
19. See RENT, 31, 32. *Arguelles* v. *Wood*, ii. 579.
20. A debt due by two joint debtors to two joint creditors, cannot be set off against a debt due by one of the joint creditors to one of the joint debtors. *Langley* v. *Brent*, iii. 365.
21. See EQUITY, 75. *Ashton* v. *McKim*, iv. 19.
22. See BILLS AND NOTES, 197, 198. *Stettinius* v. *Myer*, iv. 349.
23. See EVIDENCE, 483. *Deale* v. *Kroft*, iv. 448.
24. See RENT, 46. *Roach* v. *Burgess*, iv. 449.
25. See LIMITATION, 65. *Chew* v. *Baker*, iv. 696.

SHERIFF.
1. A sheriff cannot levy a *fi. fa.* on money in his hands made upon another *fi. fa.* but must bring the money into Court. *Fendall* v. *Turner*, i. 35.
2. In debt against the sureties in a sheriff's bond, his return that he had satisfied the plaintiff, is not evidence for the defendants. *Governor of Virginia* v. *Wise et al.* i. 142.
3. Upon a breach assigned in not paying money received upon a *fi. fa.* the plaintiff must prove that the sheriff received the money before the return day of the execution. *I bid.*
4. The sureties of a sheriff in Virginia, are not liable for officer's fees, unless the account of the same shall have been delivered to the sheriff for collection before the 1st of March. *Governor of Virginia* v. *Turner's Sureties*, i. 286.

SHIP.
1. A ship lying in Baltimore, whose owners reside in Alexandria, D. C., is not liable for provisions and repairs, Baltimore and Alexandria not being foreign to each other; but is liable for wages of a seaman shipped for a voyage not prosecuted. *Lovering* v. *Bank of Columbia*, i. 152.
2. The wages of a ship-keeper, in port, are not a lien upon the ship. *Id.* 207.

SLANDER.
1. It is no justification, in slander, that the defendant received his information from a slave. *Atkinson* v. *Patton*, i. 46.
2. In slander, bail is not required if the affidavit does not state the words spoken, and that the defendant is about to leave the district. *Lanstraaz* v. *Powers*, i. 42.
3. A plea of justification in slander must be substantially proved. *Forrest* v. *Hanson*, i. 63.
4. It is actionable to say of a director of a bank that he is a swindler. *Ibid.*
5. In slander one cent damages carries full costs. *Ibid.*
6. In an action of slander, if it appear, from the plaintiff's evidence, that, at the time of speaking the words, the defendant named his author who was a responsible man, the defendant may avail himself of that defence without pleading the matter as a special justification. *Hogan* v. *Brown*, i. 75.

SLANDER, (*continued.*)
7. A declaration in slander may be amended by adding a new charge. *Dougherty and Wife* v. *Bentley*, i. 219.
8. Words spoken of one of the plaintiffs cannot be given in evidence to support an averment of words spoken of both plaintiffs; nor can words spoken by each defendant separately, and out of the presence of each other, be given in evidence to support an averment of words spoken jointly by the defendants. *Davis and Wife* v. *Sherron and Wife*, i. 287.
9. Actionable words spoken in the second person will not support an averment of words spoken in the third person. *Rutherford* v. *Moore*, i. 388; *Birch* v. *Simms*, i. 550.
10. The words "he gets his living by thieving," are actionable. *Rutherford* v. *Moore*, i. 388.
11. It is a libel to print and publish these words, "he is a lying, slanderous rascal;" and it is no justification that the plaintiff had stated what was not true, unless he had stated it maliciously. *Snowdon* v. *Lindo*, i. 569.
12. In slander, the defendant may, in mitigation of damages, give evidence of the grounds of his belief of the truth of the charge which he has made. *Cooke* v. *O'Brien*, ii. 17.
13. Words, charging the plaintiff, a single woman, with incontinence, are not actionable without an allegation of special damages. *Keiler* v. *Lessford*, ii. 190.
14. See PLEADING, 92. *Turner* v. *Foxall*, ii. 324.
15. Words spoken in relation to the credit of a holder of shares in the joint stock of a boat, are actionable if special damage thereby be alleged in the declaration, but the averment of such special damage is not sufficient to support the action, without the averment of a *colloquium* respecting the plaintiff as a share-holder in the boat, and that it was a business requiring credit. *Ibid.*
16. In mitigation of damages, the defendant may give evidence of the general reputation of the plaintiff's want of punctuality in payment of his debts. *Ibid.*
17. If one of the counts be bad, and the verdict be general, the judgment must be arrested. *Ibid.*
18. Handwriting cannot be proved by comparing the paper in dispute with other papers acknowledged to be genuine. *Ibid.*
19. If a witness, upon his cross-examination has sworn falsely in the opinion of the jury, upon an immaterial point, it is competent for them to give their verdict upon his testimony in chief upon other points, corroborated by other testimony. *Ibid.*
20. See PRACTICE, 329. *Ibid.*
21. See DAMAGES, 13. *Kelly* v. *Huffington*, iii. 81.
22. See JUSTIFICATION, 1 – 25. *Kerr* v. *Force*, iii. 8.
23. Upon a demurrer to a declaration in slander, if any of the words are actionable, the judgment must be for the plaintiff. *Edds* v. *Waters*, iv. 170.
24. It is not actionable to say of a white man that he is "a yellow negro," "a villain," and "a liar," although the plaintiff has previously married with a white woman, which marriage would have been unlawful if he had been a negro or mulatto; there being no *colloquium* respecting the marriage, nor any marriage averred. Neither the Constitution of Maryland nor any statute of that State, or of the United States, deprives a colored person, merely as such, of any civil rights of a citizen. *Johnson* v. *Brown*, iv. 235.
25. Mere words of disgrace, unless written and published, are not actionable. *Ibid.*
26. See AFFIDAVIT, 16. *Stettinius* v. *Orme*, iv. 342.
27. See BAIL, 87. *Doyne* v. *Barker*, iv. 475.

SLAVE.

1. This Court has not jurisdiction of larceny by a slave in Washington county. *United States* v. *Negro Jack*, i. 44; *United States* v. *Louder*, i. 103.
2. A slave cannot be a witness, if a free white person be a party. *Thomas* v. *Jamesson*, i. 91.
3. A slave may be a witness against a free mulatto in Alexandria county. *United States* v. *Betty Bell*, i. 94.
4. This Court has no jurisdiction to try a slave for larceny in Washington county; but will quash the indictment, and send the slave to a justice of the peace to be tried. By consent of parties, the Court will try the issue whether slave or not. *United States* v. *Louder*, i. 103.
5. A slave may be tried in this Court, sitting in Alexandria for larceny. *United States* v. *Betty Wright*, i. 123.
6. Manumitted slaves are competent witnesses for or against a free mulatto in Washington county. *United States* v. *Barton*, i. 132.
7. A slave is not a competent witness for a free mulatto upon a public prosecution. *United States* v. *Nancy Swann*, i. 148.
8. A master of a vessel is not liable to the penalty of the Act of Virginia for carrying a slave out of the Commonwealth, unless he did it knowingly. *Mc Call* v. *Eve*, i. 188; *Lee* v. *Lacey*, i. 263.
9. Upon a devise that a slave should be sold for eight years, after which he should be free, the term of eight years begins to run from the death of the testator, or within a reasonable time thereafter. *Negro Bazil* v. *Kennedy*, i. 199.
10. A slave brought into Alexandria in 1802, by a person removing from Maryland, and omitting to take the oath within sixty days after his removal, is entitled to freedom under the Act of December 17, 1792, although the person bringing the slave was not his owner. *Negro Loudon* v. *Scott*, i. 264.
11. A petitioner for freedom has not a right to go and search for his witnesses. *Negro Moses* v. *Dunnaho*, i. 315.
12. Bringing a slave from Alexandria to Washington, is an importation contrary to the Act of Maryland, 1796, c. 67. *Negro William Foster* v. *Simmons*, i. 316.
13. Slaves are competent witnesses for free negroes indicted for assault and battery. *United States* v. *Negro Terry*, i. 318.
14. A free mulatto, born of a white woman, is a competent witness against a white man. *Minchin* v. *Docker*, i. 370.
15. Evidence that a black man has, for many years, publicly acted as a freeman, and been generally reputed to be free, rebuts the presumption of slavery arising from color, and is evidence that he was born of a white woman. *Ibid.*
16. A slave coming from Virginia into Maryland, more than a year after his master, and sold, is entitled to freedom under the Maryland Act, 1796, c. 67. *Negro Moses Burr* v. *Dunnahoo*, i. 370.
17. A slave is a competent witness for a free black man in a criminal prosecution. *United States* v. *Shorter*, i. 371.
18. Assault and battery of a slave is an indictable offence. *United States* v. *Butler*, i. 373.
19. A sale of a slave, on the express condition that he should be free at the end of six years, is not a manumission under the Maryland Act, 1796, c. 67. *Fidelio* v. *Dermott*, i. 405.
20. A manumission by will is not in prejudice of creditors, if the real and personal estate are sufficient, without the value of the manumitted slave, to pay all the debts of the testator. *Ibid.*
21. A manumission by will, after a term of years, is not revoked by a codicil ordering the sale of all the testator's slaves, if at the time of making the codicil, their term of service had not expired. *Ibid.*

SLAVE, (*continued.*)
22. The general issue on a petition for freedom, is that which puts in issue the single question whether free or not. *Negro Ben* v. *Scott*, i. 407.
23. A slave imported, does not gain his freedom by the omission of the master to prove to the satisfaction of the naval officer, or collector of taxes, the residence of the slave in the United States, according to the Maryland Act of April, 1783, c. 23. *Ibid.*
24. A deed, transferring a slave in Maryland, not recorded, cannot be given in evidence without proof of its execution, although acknowledged before a justice of the peace in Maryland. *Lucy* v. *Slade*, i. 422.
25. The oath required by the Virginia Act of December 17, 1792, § 4, is of no avail unless taken within sixty days after the removal of the party. *Ibid.*
26. A parol gift of a slave in Virginia, in 1784, was void under the Act of 1758, although possession accompanied and followed the gift; and it was not made valid by the Act of 1787. *Lee* v. *Ramsay*, i. 435.
27. A legacy of a slave gives no title until assented to by the executor. *Ibid.*
28. A deed of gift of a slave in 1790, was void, unless possession accompanied and followed the deed. *Ibid.*
29. The owner of goods stolen by a slave, is not a competent witness for the prosecution, because he is entitled to one half of the fine which the Court must impose under the Act of Congress, 1790, April 30. *United States* v. *Milly Rhodes*, i. 447.
30. The promise of a slave does not bind him when free, although it be to pay money borrowed to purchase his freedom. *Crease* v. *Parker*, i. 448.
31. Trespass *vi et armis* lies by the owner of a slave, against a stranger who beats the slave *per quod servitium amisit*. *Wilson* v. *Kedgeley*, i. 477.
32. The list of slaves required by the Maryland Act, 1796, c. 67, must be delivered to the clerk of the county into which they are first brought, and within three months thereafter. *Negro Harry Davis* v. *Baltzer*, i. 482.
33. Money advanced to a slave to enable him to purchase his freedom, cannot be recovered of him after his emancipation, although he acknowledge the debt after suit brought. *Crease* v. *Parker*, i. 506.
34. A slave is not a competent witness against a free-born mulatto, not subject to any term of servitude by law. *United States* v. *Peggy Hill*, i. 521.
35. See FREEDOM, 2. *Negro Walter Thomas* v. *Scott*, ii. 2.
36. See EVIDENCE, 208. *Queen* v. *Neale*, ii. 3.
37. *Id.* 209. *Queen* v. *Hepburn*, ii. 3.
38. See FREEDOM, 23. *Bell* v. *Hogan*, ii. 21.
39. *Id.* 24. *Ibid.*
40. See EVIDENCE, 221. *Davis* v. *Forrest*, ii. 23.
41. Trespass *vi et armis* will lie for assaulting and shooting the plaintiff's slave, without a *per quod*, &c. *Newman* v. *Davis*, ii. 16.
42. See EVIDENCE, 232. *United States* v. *Thomas*, ii. 36.
43. An attempt, by a slave, to ravish a white woman, is punishable by death. *United States* v. *Negro Patrick*, ii. 66.
44. In an action upon the case for maliciously conspiring to deprive the plaintiffs of their slave, it is necessary for them to prove malice in the defendant; and it is competent for the defendant to show probable cause, and the want of malice. *Lewis et al.* v. *Spalding*, ii. 68.
45. A slave is not a competent witness against a free black person in a capital case; but free blacks, unless they are in a state of servitude by law, are competent witnesses against free blacks. *United States* v. *Butler*, ii. 75.
46. By the Virginia Act of January 25, 1798, § 6, 7, a master of a vessel is

SLAVE, (*continued.*)
liable to the owner of a slave, for his loss if he take the slave out of the county of Alexandria, D. C., without a written authority from his owner, or the compliance with the other requisites of that act; and a general hiring to the defendant for eleven months without any limitation as to the nature or place of his employment, is not such a permission as the act requires, although the plaintiff knew that the defendant was a master of a vessel, and the slave was a seaman. *Park* v. *Willis*, ii. 83.
47. See EVIDENCE, 253. *United States* v. *Bruce*, ii. 95.
48. See FREEDOM, 28. *Negro Robert Simmons* v. *Gird*, ii. 100.
49. *Id.* 29. *Negro Emanuel* v. *Ball*, ii. 101.
50. *Id.* 30. *Negro Violette* v. *Ball*, ii. 102.
51. Trespass *vi et armis* will lie for a master against one who beats his slave, although there should be no loss of service. *Garey* v. *Johnson*, ii. 107.
52. An indictment will not lie against a person for dealing with a slave without his master's consent; the statute having provided a different mode of prosecution. *United States* v. *Pickering*, ii. 117.
53. See FREEDOM, 31. *Negro Jo. Thompson* v. *Clarke*, ii. 145.
54. See MARINER, 1. *Slacum* v. *Smith*, ii. 149.
55. An action upon the case will lie for the loss of the plaintiff's slave, although the defendant acquired and kept possession of the slave wrongfully and unlawfully. *Washington* v. *Wilson*, ii. 153.
56. An indictment will not lie at common law for stealing a mulatto boy, if he is not averred to be a slave. *United States* v. *Godley*, ii. 153.
57. See INSOLVENT, 29. *Watson* v. *Hall*, ii. 154.
58. See FREEDOM, 32. *Negro Sarah* v. *Taylor*, ii. 155.
59. See LIMITATION, 26. *Love* v. *Boyd*, ii. 156.
60. A deed of manumission, when acknowledged and recorded, relates to the time of its execution. *Betty* v. *Deneale*, ii. 156.
61. See FREEDOM, 34. *Negro Sam Bias* v. *Rose*, ii. 159.
62. *Id.* 35. *Contee* v. *Garner*, ii. 162.
63. *Id.* 36. *Negro Sam* v. *Green*, ii. 165.
64. An action of assumpsit in nature of an action of deceit will lie for knowingly and falsely representing a slave, sold by the defendant to the plaintiff, to be sound, although there should be a bill of sale under seal, warranting the slave to be a slave for life, without expressly warranting the soundness of the slave. *Grant* v. *Bontz*, ii. 184.
65. See FREEDOM, 37. *Negro Sam Reeler* v. *Robinson*, ii. 220.
66. Length of time does not raise a presumption against a slave, that the owner took the oath required by law. *Negro Jack Garretson* v. *Lingan*, ii. 236.
67. *Quære*, whether an indictment will lie, at common law, for enticing away a slave. *United States* v. *Negro Pompey*, ii. 246.
68. See FREEDOM, 38. *Dunbar* v. *Ball*, ii. 261.
69. *Id.* 39. *Negro Daniel* v. *Kincheloe*, ii. 295.
70. *Id.* 40. *Negro Jo Brown* v. *Wingard*, ii. 300.
71. See HIRE. *Scott* v. *Bartleman*, ii. 313.
72. See DEPOSITION, 43. *Humphries* v. *Tench*, ii. 337.
73. See FREEDOM, 42. *Matilda* v. *Mason*, ii. 343.
74. *Id.* 44. *William Jordan* v. *Sawyer*, ii. 373.
75. *Id.* 46. *Negro Vincent* v. *Simpson*, ii. 405.
76. See JURISDICTION, 37. *United States* v. *Negro Ellick*, ii. 412.
77. Cruelly, inhumanly, and maliciously to cut, slash, beat, and ill treat his own slave, is an indictable offence at common law. *United States* v. *Robert Brocket*, ii. 441.
78. See FREEDOM, 47. *Negro Amelia* v. *Caldwell*, ii. 418.
79. *Id.* 52. *Negro Fanny* v. *Tippett*, ii. 463.

SLAVE, (*continued.*)
80. FREEDOM, 48. *Negro Alice* v. *Mortè*, ii. 485.
81. *Id.* 49. *Negro Rebecca* v. *Pumphrey*, ii. 514.
82. *Id.* 50. *Negro Peter* v. *Preuss*, ii. 561.
83. *Id.* 51. *Negro Letty* v. *Lowe*, ii. 634.
84. If the plaintiff's slave be hired to the defendant in the District of Columbia, who carries her to New Hampshire without the authority or consent of the plaintiff, by means whereof she is lost to the plaintiff, he may, in trover, recover the value of the slave; but if the plaintiff assented to the defendant's taking the slave to New England, either before or after he took her, and she was lost without any negligence or omission of the defendant, the plaintiff is not entitled to recover. *Semmes* v. *Sherburne*, ii. 637.
85. See JURISDICTION, 53. *United States* v. *Negro Calvin et al.* ii. 640.
86. *Quære*, whether a free colored man is a competent witness in a cause between white persons. *O'Neale* v. *Willes*, ii. 108.
87. A slave convicted of manslaughter in Alexandria, D. C., may be punished by burning in the hand and whipping. *United States* v. *Negro Tom*, ii. 114.
88. There can be no binding contract between a slave and his master. *Negro Fanny* v. *Kell*, ii. 412.
89. The child of a female slave is a slave, although the mother has the promise of the master that she shall be free at the end of a certain term of years. *Ibid.*
90. In an indictment under the nineteenth section of the Maryland Act of 1796, c. 67, for aiding and advising the transportation of a slave, there must be an averment of transportation from the District. *United States* v. *Abraham Williams*, iii. 65.
91. See ATTACHMENT, 78. *Negro Richard* v. *Van Meter*, iii. 214.
92. See DEED, 7, 8. *Mitchell* v. *Wilson*, iii. 242.
93. See EVIDENCE, 429. *Mandeville* v. *Cokenderfer*, iii. 257.
94. The tax upon slaves of non-resident owners under the by-law of April 5, 1823, does not accrue until the hiring is complete. If the tax be paid and received before the prosecution is commenced, the owner is not liable to the penalty. *Whelan* v. *Corporation of Washington*, iii. 292.
95. See FREEDOM, 58. *Negro Louisa* v. *Mason*, iii. 294.
96. *Id.* 59. *Negro John Battles* v. *Miller*, iii. 296.
97. LIMITATION, 53. *Reardon* v. *Miller*, iii. 344.
98. See DETINUE, 1. *Bernard* v. *Herbert*, iii. 346.
99. See NEGLIGENCE, 6. *Mandeville* v. *Cokendorfer*, iii. 397.
100. Slaves cannot be manumitted in Washington county by last will, if over forty-five years old at the time the manumission is to take effect. *Wigle* v. *Kerby*, iii. 597.
101. The owner of a female slave sold her without reserving any reversionary right, and took a covenant from the vendee that he would set her free after twelve years' service; nothing being said of her increase in the meantime. *Held*, that parol evidence of the declarations of the vendor that he had sold the slave for her full value as a slave for life, was not admissible, and that the written evidence purported that the vendor had parted with his whole right in the slave to the vendee, and that the vendor was not entitled to the issue born after the sale. *Scott* v. *Auld*, iii. 647.
102. See BILLS AND NOTES, 185. *Negro William Smith* v. *Parker*, iii. 654.
103. A slave is not a competent witness against a free mulatto not in a state of "servitude by law," in a prosecution for larceny in Washington county, D. C., unless at the discretion of the Court, under the circumstances stated in the Act of Maryland of 1717, c. 13, and then the slave should not be forced or permitted to testify against her mother. *United States* v. *Charity Gray*, iii. 681.

SLAVE, (*continued.*)
104. See FREEDOM, 67. *Negro Christopher Harris* v. *Alexander*, iv. 1.
105. See EVIDENCE, 446. *Stanback* v. *Waters*, iv. 2.
106. See FREEDOM, 68. *Negro Quando* v. *Clagett*, iv. 17.
107. *Id.* 69. *Negro Simon* v. *Payne*, iv. 99.
108. *Id.* 70, 71. *Negro Thomas Butler et al.* v. *Duvall*, iv. 167.
109. *Id.* 72. *Negro Emanuel Gilbert* v. *Ward*, iv. 171.
110. *Id.* 73. *Negro Kitty* v. *McPherson*, iv. 172.
111. *Id.* 74, 75. *Negro Mary* v. *Talburt*, iv. 187.
112. *Id.* 76, 77. *Negro Samuel* v. *Childs*, iv. 189.
113. See FOREIGN LAW. *Negro Delilah* v. *Jacobs*, iv. 238.
114. See FREEDOM, 78. *Negro Esther* v. *Buckner*, iv. 253.
115. A count, under the Maryland Act, 1796, c. 67, § 19, for giving a pass to a slave, is bad if it do not aver that the master or owner was thereby deprived of the service of the slave. But, upon conviction of a free person, upon an indictment under the tenth section of the Maryland Act of 1751, c. 14, for enticing a slave to run away, and who actually ran away, the offender may be fined under the nineteenth section of the Act of 1796, c. 67, without an averment of loss of service. *United States* v. *Prout*, iv. 301.
116. See RUNAWAYS, 3. *United States* v. *Abraham Johnson*, iv. 303.
117. See FREEDOM, 79. *Negro Clara Moore* v. *Jacobs*, iv. 312.
118. *Id.* 80. *Negro Rebecca Hobbs* v. *Magruder et al.* iv. 429.
119. See MANUMISSION, 12. *Negroes E. & K. Chapman* v. *Fenwick*, iv. 431.
120. See EVIDENCE, 481. *Negro Robert Thomas* v. *Magruder*, iv. 446.
121. See FREEDOM, 82. *Negro Frederick Bowman* v. *Barron*, iv. 450.
122. *Id.* 83. *Negro Jo Crawford* v. *Slye*, iv. 457.
123. *Id.* 84. *Negro Keziah* v. *Slye*, iv. 463.
124. See ASSAULT AND BATTERY, 15. *United States* v. *R. B. Lloyd*, iv. 468.
125. See CRUELTY, 3. *Id.* 470.
126. See LARCENY, 38. *United States* v. *Negro Nathan, a slave*, iv. 470.
127. See FREEDOM, 85. *Negro Ann Brooks* v. *Nutt*, iv. 470.
128. See ATTACHMENT, 92, 93, 94. *Negro John Thornton* v. *Davis*, iv. 500.
129. See INDICTMENT, 90, 91, 92. *United States* v. *Negro Henry Frye, a slave*, iv. 539.
130. See FREEDOM, 94. *Negro Charles Taylor* v. *Buckner*, iv. 540.
131. See INDICTMENT, 94. *United States* v. *Negro Nelson*, iv. 579.
132. See FREEDOM, 87, 88. *Negro Rachel Brent* v. *Armfield*, iv. 579.
133. See BURGLARY, 2. *United States* v. *Bowen, a slave*, iv. 604.
134. See INDICTMENT, 101. *United States* v. *Spalding*, iv. 616.
135. See JUSTICE OF THE PEACE, 54. *United States* v. *Simms*, iv. 618.
136. See FREEDOM, 89. *Fenwick* v. *Tooker*, iv. 641.
137. *Id.* 90. *Negroes Sam and Barbara Lee* v. *Lee*, iv. 643.
138. See KIDNAPPING, 1, 2, 3. *United States* v. *Henning*, iv. 645.
139. See FREEDOM, 92, 93. *Negro Herbert Harris* v. *Firth*, iv. 710.
140. See INDICTMENT, 98, 99. *United States* v. *Henning*, iv. 608.
141. The defendant's male servant, being, by the consent of the plaintiff and defendant, at the plaintiff's house, on a visit to his wife, who was the slave of the plaintiff, was taken suddenly ill of the small-pox, and, after being nursed three weeks by the plaintiff, died at her house. The defendant, as soon as he knew of the sickness of the slave, offered to remove him to his own house, but the plaintiff would not consent to the removal. Upon this evidence the Court instructed the jury that the plaintiff could not recover. *Martha Manning* v. *Florentius Cox*, iv. 693.
142. Evidence that a colored person has resided in the county and city of Washington, for a year and more, going at large as a free person, and claiming to be free, in the absence of all contradictory evidence, except color, is

SLAVE, (*continued.*)
sufficient to rebut the presumption of slavery arising from color. *United States* v. *Priscilla West*, v. 35.
143. See FREEDOM, 96. *United States* v. *Alexander Vinsent*, v. 38.
144. *Id.* 97. *Negro Sally Moody* v. *Fuller*, v. 303.
145. See SENTENCE, 2. *United States* v. *Negro Joseph Farrell*, v. 311.
146. See EMANCIPATION. *Negro Bacchus Bell* v. *McCormick*, v. 398.
147. See FREEDOM, 98. *Negro George Coots* v. *Morton*, v. 409.
148. *Id.* 99. *Thomas* v. *Mackall*, v. 536.
149. *Id.* 100, 101. *Negro Kennedy* v. *Purnell*, v. 552.
150. *Id.* 102. *Corcoran* v. *Jones*, v. 607.
151. *Id.* 103. *United States* v. *Thomas N. Davis*, v. 622.
152. *Id.* 104. *Negro Moses Graham* v. *Alexander*, v. 663.
153. See EVIDENCE, 575. *Negro Ann Bell* v. *Greenfield*, v. 669.
154. See FREEDOM, 106. *Negro James Ash* v. *Williams*, v. 674.

SMALL NOTES, AS CURRENCY.
See INDICTMENT, 121 – 125. *Stettinius* v. *United States*, v. 573.

SPECIAL SESSION.
1. The Circuit Court of the District of Columbia, cannot, at a special session for the trial of criminal causes, try a cause which was depending at the preceding stated session. *Memorandum*, iv. 337.
2. The Circuit Court of the District of Columbia has power to hold special sessions for the trial of criminal causes; and has jurisdiction, at a special session, to try offences committed between the time of ordering and the time of holding such session; and its jurisdiction is not limited to such causes of federal jurisdiction as may be tried in a Circuit Court of the United States sitting in a State. *United States* v. *Christiana Williams*, iv. 372.
3. The Circuit Court of the District of Columbia has all the powers which were by law vested in the Circuit Courts of the United States on the 27th of February, 1801, and, among others, the power to send attachments into any other district for witnesses in criminal cases. *Ibid.*
4. When a special session of the Court is ordered for the trial of criminal causes, the criminal causes pending in the preceding regular term, cannot be continued to the special session. *United States* v. *George Milburn*, iv. 552.

SPECIFIC EXECUTION.
1. See CONTRACT, 17. *Dunlop* v. *Hepburn*, ii. 86.
2. *Id.* 28. *Robinson* v. *Cathcart*, ii. 590.

SPIRITUOUS LIQUORS.
An indictment will not lie against an inhabitant of the city of Washington for retailing spirituous liquors within the city. *United States* v. *Dixon*, ii. 92.

STAGE-COACH.
1. See NEGLIGENCE, 4. *Lowe* v. *Stockton et al.* iv. 537.
2. *Id.* 5. *Beltzhoover* v. *Stockton et al.* iv. 695.

STAMPS.
1. A receipt for goods to be paid for at a certain price, is a note for the security of money within the Stamp Act of 1797. *Neale* v. *Hill*, i. 3; *Moore* v. *Gadsby*, i. 3.
2. A stamp is not necessary to an acknowledgment of having hired a house. *Brown* v. *Tonkin*, i. 85.

STATE LAWS.
See EVIDENCE, 334. *Commercial and Farmers Bank* v. *Patterson*, ii. 346.

STEAMBOAT.
See MARITIME LAW. *Harris* v. *Nugent*, iii. 649.

STERLING MONEY.
Judgment for sterling money, (Irish Sterling.) *Bond* v. *Grace*, i. 96.

STREETS.
See CORPORATION OF GEORGETOWN, 2. *Wright* v. *Corporation of Georgetown*, iv. 534.

SUPERCARGO.
1. Delivery of the cargo to the owners by the supercargo, is evidence of his receipt of his commissions, in an action against him by a third person who is entitled to a share in the commissions. *Manning* v. *Loudermilk*, i. 282.
2. A supercargo has a right to retain for a general balance due to him by the owners, notwithstanding their assignment of the cargo and bill of lading to a trustee, for the benefit of certain creditors. *Vowell* v. *West*, iv. 100.
3. A supercargo who receives his instructions from the ostensible owners of the whole cargo has a right to retain out of the whole proceeds of the cargo the amount of a general balance due to him from such ostensible owners, although there may be another part owner whose interest was not disclosed to him until he had settled his accounts with such ostensible owners. In such case the secret part owner cannot compel the supercargo to account with him. *Lucket* v. *West et al.* iv. 101.
4. See EQUITY, 96. *Stewart* v. *Callaghan*, iv. 594.

SUNDAY.
See NOTICE, 23. *Chesapeake and Ohio Canal Company* v. *Bradley et al.* iv. 193.

SUPERSEDEAS.
1. It is no bar to an execution upon a *supersedeas* in Washington county, that the plaintiff has recovered another judgment in Alexandria county upon the same cause of action, if it be not satisfied. *Curry* v. *Lovett*, i. 80.
2. A writ of error is not a *supersedeas* unless served within ten days after the rendition of the judgment, although the parties should have agreed to stay execution two months, and the writ of error should be served before the expiration of that time. *Thompson* v. *Voss*, i. 108.
3. A writ of error is not a *supersedeas* unless a copy of the writ be filed in the clerk's office for the adverse party according to the directions of the 23d section of the Judiciary Act of 1789. *Moore* v. *Dunlop*, i. 180; *Ex parte Negro Ben*, i. 532.
4. One of two joint defendants may supersede the judgment as to himself, and the other need not be named in the *supersedeas*. *Hodgson* v. *Mountz*, i. 366.
5. The six months' stay upon a *supersedeas* is reckoned from the day of the confession of the new judgment. The sum confessed need not be repeated in the blank at the end of the *supersedeas*. Parol evidence may be received that the confession was made at a place within the jurisdiction of the magistrates. *Ibid.*
6. If the writ of error be not a *supersedeas* to the original judgment, the Court below, in Alexandria, may proceed to judgment and execution upon the forthcoming bond. *Grundy* v. *Young*, i. 443.
7. A *supersedeas* judgment is absolutely void unless acknowledged by the original defendant and two sureties. *Smith* v. *Middleton*, ii. 233; *Mandeville* v. *Love*, ii. 249.
8. A writ of error to the judgment of the Circuit Court of the District of Columbia, awarding a peremptory *mandamus*, is a *supersedeas*, and if the peremptory *mandamus* be issued after filing of the writ of error, and

SUPERSEDEAS, (*continued.*)
within ten days after the rendition of the judgment, it will be quashed. *United States* v. *Columbian Insurance Company of Alexandria*, ii. 266.
9. See PRACTICE, 325. *Renner* v. *Bank of Columbia*, ii. 310.
10. A *supersedeas* judgment must recite the original judgment correctly. *Holmes* v. *Bussard*, ii. 401; *McSherry* v. *Queen*, ii. 406.
11. After *supersedeas*, an appeal cannot be taken from the original judgment. *Coumbe* v. *Nairn*, ii. 676.
12. See JUDGMENT, 89. *Plant* v. *Holtzman*, iv. 441.
13. See EXECUTION, 49. *Chesapeake and Ohio Canal Company* v. *Barcroft*, iv. 659.
14. See EQUITY, 127. *White* v. *Clarke and Briscoe*, v. 401.
15. See JUSTICE OF THE PEACE, 65. *Thomas* v. *Summers*, v. 434.
16. See ATTACHMENT, 109. *White* v. *Clarke et al.* v. 530.

SURETY.
1. Judgment will not be rendered on motion of one surety against another, unless the insolvency of the principals be fully proved. *White* v. *Perrin*, i. 50.
2. The summary remedy given in Virginia, by motion against a co-surety, is confined to the Court which rendered the original judgment. *Dade* v. *Mandeville*, i. 92.
3. In debt against the sureties upon a sheriff's bond, his return that he had satisfied the plaintiff is not evidence for the defendants. *Governor of Virginia* v. *Wise et al.* i. 142.
4. In an action against the sureties in a sheriff's bond, upon a breach assigned in not paying over money received upon a *fi. fa.*, the plaintiff must prove that the sheriff received the money before the return day of the execution. *Ibid.*
5. After conviction of assault and battery, the Court will permit the defendant to give security to abide the judgment. *United States* v. *Greenwood*, i. 186.
6. Sureties of an insolvent debtor in a duty bond, are not entitled to judgment at the first term against their principal. *Johns* v. *Brodhag*, i. 235.
7. The defendant may, at the trial term, give notice to a non-resident plaintiff that security for costs will be required; and the cause will be continued if the plaintiff is not ready to give the security. *Thomas* v. *Woodhouse*, i. 341.
8. In an action against a surety in a bond to perform a decree, it is not necessary that notice of the decree should have been given to the principal. *White* v. *Swift*, i. 442.
9. If the maker of the note was solvent when it became payable, and the defendant during such solvency, requested the plaintiff to sue the maker, and he did not, the defendant is discharged from his liability under the equity of the Virginia statute. *Patton* v. *Violett*, i. 463.
10. A surety who has paid money for a bankrupt in discharge of a duty bond, has not the right of the United States to proceed against the person of the bankrupt, but only against his effects. *Kerr* v. *Hamilton*, i. 546.
11. See REPLEVIN, 19. *Haller* v. *Beall*, ii. 227.
12. See SUPERSEDEAS, 7. *Smith* v. *Middleton*, ii. 233.
13. *Id.* 7. *Mandeville* v. *Love*, ii. 249.
14. See PAYMASTER, 1, 2. *United States* v. *Van Zandt*, ii. 338.
15. See ADMINISTRATION, 12. *Young* v. *Mandeville*, ii. 441.
16. *Id.* 12. *Birch* v. *Spaulding*, ii. 422.
17. If a creditor, having the bond of his debtor with a surety, takes a new security payable at a day beyond the time of payment of the bond, without the consent of the surety, with the understanding that he was not to

SURETY, (*continued.*)
trouble the principal for the money unless the new security should prove to be good for nothing, the surety is discharged, and his remedy is in equity. *Smith* v. *Crease*, ii. 481.
18. See BILLS AND NOTES, 176. *Bank of United States* v. *Lee*, iii. 288.
19. *Id.* 177. *McDonald* v. *Magruder*, iii. 298.
20. *Id.* 178. *Magruder* v. *McDonald*, iii. 299.

SURPRISE.
See EQUITY, 136. *Roach* v. *Hulings*, v. 637.

TALLIES.
See EVIDENCE, 297. *Travers* v. *Appler*, ii. 234.

TAVERN.
1. A tavern keeper in Virginia, could not, under the act of December 26, 1792, § 13, recover more than $5 for liquors sold in one year, to a boarder, to be drunk in and about the house. *Koones* v. *Thomee*, i. 290.
2. The widow and administratrix of a deceased tavern keeper cannot sell spirituous liquors under her husband's license, nor can she transfer it to another. *United States* v. *Overton*, ii. 42.

TAXES.
1. The Act of Maryland, 1785, c. 34, which forbids the replevin of goods distrained for public dues, is not applicable to the corporation taxes of the city of Washington. *Carroll* v. *Whetcroft*, i. 609.
2. See BY-LAW, 13. *Morgan* v. *Rowan*, ii. 148.
3. See REPLEVIN, 117. *Orr* v. *Ingle*, ii. 193.
4. A receipt at the bottom of a collector's certificate of a tax sale, to which certificate there is a subscribing witness, may be given in evidence without proving the certificate of sale by the subscribing witness. The receipts of the collector are not evidence upon proof of his hand writing, if he be within the jurisdiction of the Court, and be not a party in the cause. *Milligan* v. *Mayne*, ii. 210.
5. See COLLECTOR, 1. *Corporation of Washington* v. *Walker*, ii. 293.
6. Distress for corporation taxes is not barred by the statute of limitations. *Hogan* v. *Ingle*, ii. 352.
7. Goods distrained by a collector of city-taxes, cannot be replevied without a special order from a justice of the peace, as required by the Maryland Act of 1790, c. 53. *Dyer v. Coyle*, ii. 684.
8. The lots lying west of West street in Alexandria, are liable to be taxed like other lots in the town. *Common Council of Alexandria* v. *Wise*, ii. 27.
9. See SALE, 7. *Hearne* v. *Barry*, iii. 168.
10. See SLAVE, 94. *Whelan* v. *Corporation of Washington*, iii. 292.
11. See EQUITY, 48, 49, 50. *O'Neale* v. *Caldwell*, iii. 312.
12. See DISTRESS, 17, 18, 19. *Ross* v. *Holtzman*, iii. 391.
13. See DOWER, 4, 5. *Blodgett* v. *Brent*, iii. 394.
14. See SALE, 16. *Hunt* v. *Smith*, iii. 432.
15. *Id.* 18. *Hellrigle* v. *Ould*, iv. 72.
16. See CORPORATION OF ALEXANDRIA, 1. *Farmers Bank* v. *Fox*, iv. 330.
17. See CORPORATION OF WASHINGTON, 29, 30. *Rodbird* v. *Rodbird*, v. 125.
18. See CORPORATION OF ALEXANDRIA, 4. *Beale* v. *Burchell*, v. 310.
19. See CORPORATION OF WASHINGTON, 38. *Mockbee* v. *Upperman*, v. 535.
20. A tax sale of part of a lot in the city of Washington in 1835, was held to be void because the number of the lot, of which the premises in dispute were part, was not mentioned nor stated in the advertisement of the sale, as required by the charter of Washington of 1820, § 10, and the Act of May 26, 1824. *Bradley* v. *Conner*, v. 537.

TAXES, (*continued.*)
21. See DISTRESS, 27 – 30. *Semmes* v. *McKnight*, v. 539.
22. See EJECTMENT, 24. *Wilkes* v. *Elliot*, v. 611.

TENANT.
1. If a tenant who has occupied and paid rent annually, holds over into a new year, it is evidence of a new demise for a year. *Hoof* v. *Ladd*, i. 167.
2. A tenant who has erected a wood-shed upon posts inserted two feet into the earth, has a right to remove it during the term. *Krouse* v. *Ross*, i. 368.

TENDER.
1. On a plea of tender, the defendant holds the affirmative, and has a right to open and close the cause. *Auld* v. *Hepburn*, i. 122.
2. Upon a plea of tender, the defendant must prove that he produced and offered the money to the plaintiff. *Ladd* v. *Patten*, i. 263.
3. The plaintiff, upon a plea of tender, cannot take out the money and proceed for more. *Mayor of Alexandria* v. *Patten*, i. 294.
4. If money, paid in advance, is to be forfeited in case the residue be not paid by a certain day, the party who is to pay, must tender or use his best endeavor to tender, the balance on or before the day limited. *Bailey* v. *Duvall*, i. 283.
5. See PRACTICE, 441. *Perkins* v. *Beck*, iv. 68.

TERRE-TENANTS.
1. If some of the terre-tenants named in the *scire facias* are returned "*nihil*," an *alias scire facias* must be issued against them, or the cause will be discontinued. *Semb.:* that the *scire facias*, or its return, must describe the land held by each tenant. *Baker* v. *French*, ii. 539.
2. See JUDGMENT, 95 – 98. *Jackson* v. *Bank of the United States*, v. 1.
3. See PLEADING, 128, 129. *Mandeville* v. *McDonald*, iii. 631.

TERRITORY.
See BANK, 13, 14, 15. *United States* v. *Forrest*, iii. 56.

TOBACCO NOTES.
Possession of tobacco-notes is evidence of the possession of the tobacco which they represent. *Hance* v. *McCormick*, i. 522.

TREASON.
1. This Court will issue a bench-warrant against a person charged with treason, upon *ex parte* affidavits, before any presentment or indictment made or found by a grand jury, and, when arrested, will commit him to the prison of this Court, without stating when or where he is to answer for the offence. *United States* v. *Bollman et al.* i. 373.
2. Upon an application for a bench-warrant on a charge of treason, as well as upon a motion to commit for the same cause, messages from the President of the United States to Congress may be read. *Ibid.*
3. Upon a motion to commit a prisoner for treason, he may be heard by counsel. *Ibid.*
4. The declaration by the prisoner, of his intention as to any of the overt acts of treason charged in the indictment, may be given in evidence, before evidence is offered of such overt act. *United States* v. *Richard H. Lee*, ii. 104.
5. The declaration of the prisoner accompanying the overt act laid in the indictment, may be given in evidence to show his intention in doing the act; but his confession of having committed the overt act charged, cannot be given in evidence. *Ibid.*

TRESPASS.
1. In trespass the defendant cannot justify under the general issue. *Goddard* v. *Davis*, i. 33.

TRESPASS, (*continued.*)
2. Bail may be required in trespass for cutting up a boat. *Voss* v. *Tuel*, i. 72.
3. In trespass the plaintiff cannot recover damages for erecting a fence and obstructing his windows, unless he was in possession at the time of erecting the fence. *O'Neale* v. *Brown*, i. 79.
4. Possession alone will maintain trespass *quare clausum fregit* against one who has no title. *Edmondson* v. *Lovett*, i. 103.
5. In trespass for breaking up the plaintiff's scow, if the defendant knowing that a third person had committed the trespass, received from him the timbers and planks, knowing them to be the property of the plaintiff, he is guilty of the trespass. *Quære.* *Voss* v. *Baker*, i. 104.
6. In trespass the plats are evidence only, and do not constitute part of the pleadings, as they do in ejectment. *Pancoast* v. *Barry*, i. 176.
7. It is not felony to steal rails inserted into posts fixed in the ground, if severed and taken away at one time. *United States* v. *Wagner*, i. 314.
8. Permanent and useful improvements made upon land, may be given in evidence in mitigation of damages, in an action of trespass for *mesne* profits brought after recovery in ejectment. *Gill* v. *Patten*, i. 465.
9. Trespass *vi et armis* lies by the owner of a slave against a stranger who beats the slave, *per quod servitium amisit.* *Wilson* v. *Kedgeley*, i. 477.
10. Possession in fact, or in law, is necessary to maintain trespass *quare clausum fregit.* *Tayloe* v. *Varden*, ii. 37.
11. See SLAVE, 51. *Garey* v. *Johnson*, ii. 107.
12. See PLEADING, 75. *Holmead* v. *Corcoran*, ii. 119.
13. See MILITIA, 5. *Slade* v. *Minor*, ii. 139.
14. See CONSTABLE, 7. *Wells* v. *Hubbard*, ii. 292.
15. In trespass *vi et armis* for taking away the plaintiff's son *per quod servitium amisit*, the plaintiff must either prove actual force, or knowledge on the part of the defendant, that the young man was under age. *Negro Sampson Somboy* v. *Loring*, ii. 318.
16. See JURISDICTION, 47. *Mickum* v. *Paul*, ii. 568.
17. In trespass *quare clausum fregit*, the plaintiff must prove a trespass in the county in which the suit is brought. *Gorman* v. *Marsteller*, ii. 311.
18. If the close be partly in Virginia, and partly in the District of Columbia, the injury done in the Virginia part may be given in evidence under the *alia enormia.* An entry into the district part of the close, with intent to do injury in the other part, is unlawful, although without such intent it would have been lawful. *Ibid.*
19. See EVIDENCE, 457. *Reynolds* v. *Baker*, iv. 104.

TRIAL.
1. If a juror in a civil cause, be taken suddenly ill, the jury may be discharged, and the trial postponed to the next term. *Young* v. *Marine Ins. Co.* i. 566.
2. The two jurors first sworn in the cause, are the proper triers of a challenge for favor. *Negro Clem Joice* v. *Alexander*, i. 528.
3. The Court will not permit counsel to argue to the triers of a challenge for favor. *Ibid.*

TROVER.
1. In trover, a demand and refusal are not evidence of conversion, if there be an oral agreement that the defendant should retain the possession of the goods as collateral security; although by a previous written agreement, the defendant was bound to deliver them on demand. *McIntosh* v. *Summers*, i. 41.

TROVER, (*continued.*)
2. General property in the goods, without actual possession, is sufficient to maintain trover. *Cook* v. *Woodrow*, i. 437.
3. An agreement to sell and transfer goods seized and held as a distress for rent due by the vendor, will transfer the general property so as to enable the vendee to maintain trover after the goods have been replevied. *Ibid.*
4. Trover will not lie against the master of a vessel for the cargo, unless the freight is paid or tendered, or the payment is waived; nor if the goods were lost so that they did not come to the use of the defendant. *Hodgson* v. *Woodhouse*, i. 549.
5. In trover for "a chest containing sundry tools," and "a trunk containing sundry clothes," the plaintiff cannot give evidence of the value of the tools and clothes, the defendant being charged only with the conversion of the chest and trunk containing the tools and clothes, and not of the tools and clothes themselves. *Ball* v. *Patterson*, i. 604.
6. A declaration in trover for "a tool-chest containing divers tools and working utensils," and "a trunk containing clothes," is sufficiently certain. *Id.* 607.
7. See BARON AND FEME, 11. *Hollenbach* v *Miller*, iii. 176.
8. See DISTRESS, 16. *King* v. *Fearson*, iii. 255.

TRUST.
1. The legal title of the trustees cannot be set up against the *cestui que trust.* *O'Neal* v. *Brown*, i. 69.
2. By the Maryland Acts of 1791, c. 45, § 2, and 1793, c. 58, the legal title vests in the *cestui que use.* *Ibid.*
3. A deed conveying, in trust to secure certain creditors, certain specified articles of personal property, does not protect, from the general creditors, articles purchased to supply the place of articles sold by the trustee, unless so stipulated in the deed of trust. *Letourno* v. *Ringgold*, iii. 103.
4. See CHARITABLE USES, 1, 2, 3. *Barnes* v. *Barnes*, iii. 269.
5. See EQUITY, 48, 49, 50. *Oneale* v. *Caldwell*, iii. 312.
6. *Id.* 55 – 59. *Hayman* v. *Keally et al.* iii. 325.
7. See PRACTICE, 426. *Farmers and Mechanics Bank* v. *Gaither*, iii. 347.
8. See ATTORNEY, 8, 9. *Boone* v. *Clarke*, iii. 389.
9. See DEED, 13. *Bank of the United States* v. *Benning*, iv. 81.
10. See EQUITY, 83, 84. *Nicholson* v. *McGuire*, iv. 194.
11. See EJECTMENT, 14. *Waters et al.* v. *Butler*, iv. 371.
12. The trustee of a family settlement, in which infants are interested, may be changed, by the consent of the parties, upon a bill filed for that purpose only. *Young* v. *Young*, iv. 499.
13. See BARON AND FEME, 16. *Marshall* v. *Dorsett*, iv. 696.
14. *Id.* 19. *Markoe et ux.* v. *Maxcy*, v. 306.
15. *Id.* 20 – 24. *Bank of the United States* v. *Lee*, v. 319.
16. See EQUITY, 124. *Dutilh* v. *Coursault*, v. 349.
17. See DAMAGES, 28. *Connolly* v. *Belt*, v. 405.
18. If there be no person in existence competent to receive payment of the debt, to secure which, property has been conveyed in trust, the Court will, after the lapse of sixteen years, decree a conveyance by the trustee to the heirs of the debtor. *Saunders* v. *Mason*, v. 470.
19. See DECREE, 5. *Carroll* v. *Dowson*, v. 514.
20. See EQUITY, 133. *Markoe* v. *Coxe*, v. 537.

USAGE.
1. See BILLS AND NOTES, 84. *Monroe* v. *Mandeville*, ii. 187.
2. *Id.* 138. *Bank of Alexandria* v. *Deneale*, ii. 488.
3. *Id.* 139. *Bank of Columbia* v. *Lawrence*, ii. 510.

USAGE. (*continued*)
4. *Id.* 151. *Patriotic Bank* v. *Farmers Bank*, ii. 560.
5. *Id.* 153. *Coyle* v. *Gozzler*, ii. 625.

USE AND OCCUPATION.
1. In Virginia, an action for use and occupation will lie, if there be a parol demise for a time and rent certain. *Wise* v. *Decker*. i. 190.
2. See RENT, 40. *Bank of Columbia* v. *Galloway*, iii. 353.
3. *Id.* 43. *Blake* v. *Grammer*, iv. 13.

USURY.
1. If a negotiable sixty-day note for $1,500 be put into the hands of a broker, to raise money upon, and he buys with it flour, which he sells for $1,200, this is not usury. *Riddle* v. *Mandeville*, i. 95.
2. The statute of usury applies to corporations as well as to private persons. *Bank of Alexandria* v. *Mandeville*, i. 552.
3. The Bank of Alexandria, in discounting notes, may deduct the whole interest for the whole time they have to run. *Ibid.*
4. See EVIDENCE, 240. *United States* v. *Moxley*, ii. 64.
5. *Id.* 251. *Knowles* v. *Parrott*, ii. 93.
6. *Id.* 257. *Pierce* v. *Reintzel*, ii. 101.
7. See BILLS AND NOTES, 87. *Gaither* v. *Lee*, ii. 205.
8. *Id.* 106. *Bank of the United States* v. *Crabb*, ii. 299; *Union Bank* v. *Gozzler*, *Id.* 349.
9. If a promissory note, indorsed by the defendants without an understanding that they were not to be responsible upon their indorsement, be discounted by the plaintiff at a rate exceeding the lawful rate of interest for the time the note had to run, the transaction is usurious. *Nicholls* v. *Fearson*, ii. 703.
10. See BILLS AND NOTES, 183. *Farmers and Mechanics Bank* v. *Gaither*, iii. 440.
11. See DISCOVERY. *Breckenridge* v. *Peter*, iv. 15.
12. A rent-charge, or annuity, of $500 a year, in consideration of $5,000 advanced and paid therefor, is not usurious on the face of the grant, although it contain the following covenants, namely: that the grantor will pay the said rent as it shall become due; and, if not punctually paid, that the grantee may enter and distrain therefor; and that if the rent shall remain thirty days unpaid, and no sufficient distress found on the premises charged, the grantee may enter, and from thence remove and expel the grantor, his heirs and assigns, and hold and enjoy the same as his absolute estate forever thereafter; that the grantor will keep the buildings insured against fire; and will execute and deliver any further conveyance necessary more completely to charge the premises with the said annuity, and to carry into effect the intention of the parties. And a covenant on the part of the grantee, that if the grantor, at any time after the expiration of five years, should pay to the grantee $5,000, and all arrears of rent, the grantee would execute and deliver to the grantor, any deed or instrument necessary for releasing and extinguishing the said rent or annuity, which, on such payment, should thereafter forever cease to be payable. Nor is it a good plea in bar of an avowry of distress for rent due by such a grant, that the deed was made in pursuance of an agreement that the grantee should "advance" to the grantor $5,000, in consideration of which the grantor should, by such a deed, grant to the grantee, an annuity or rent of $500, with the covenants aforesaid; although the plea aver that "so" the said deed was made "in consideration of money advanced upon and for usury," "and there has been reserved and taken above the rate of six dollars in the hundred for the forbearance of the said sum of $5,000, for the term of one year." Nor is it a good plea

USURY, (*continued.*)
in bar, of such an avowry, to say that the deed was made in pursuance of an agreement that the grantee should "lend" $5,000 to the grantor upon the terms and with the covenants contained in the said deed, although the plea aver that "so" the said grantor saith the deed was made "in consideration of money lent upon and for usury," and that "by the said indenture there has been reserved and taken above the rate of six dollars in the hundred for the forbearance of the said sum of $5,000, so lent as aforesaid, for the term of one year." Nor is it a good plea in bar of such an avowry, to say, that the said deed was made in pursuance of an agreement that the grantee should advance to the grantor $5,000, upon the terms and conditions, and in consideration of the covenants, in the said indenture mentioned and contained; and "so" the said John saith that the "said deed of indenture was made in consideration of money advanced upon and for usury; and that, by the said indenture, there has been reserved and taken above the rate of six dollars in the hundred, for the forbearance of the said sum of $5,000 so advanced as aforesaid, for the term of one year." Nor is it a good plea, in bar of such an avowry, to say, that the said deed was made in pursuance of an agreement that the grantee should "lend" to the grantor $5,000, upon the terms and conditions in the said indenture mentioned and contained, and that he did so "lend," &c. And "so" the said John saith that the said deed of indenture was made in consideration of money "lent" upon and for usury, and that, by the said indenture, there hath been reserved and taken above the rate of six dollars in the hundred for the forbearance of the said sum of $5,000, so lent as aforesaid for the term of one year. *Lloyd* v *Scott*, iv. 206.

13. There is no rule of law or practice which forbids the Court to grant a new trial where the verdict is against the weight of evidence. *Ibid.*
14. A motion for a new trial, is an application to the sound legal discretion of the Court. *Ibid.*
15. The contract prohibited by the statute of usury in Virginia, is a contract to receive something for forbearance; that is, for forbearing to enforce some debt or right; and unless there was a right to demand payment, there could be no forbearance; and, if no forbearance, no usury. *Ibid.*
16. See INTEREST, 8. *Oliver* v. *Decatur*, iv. 461.
17. It is usury to take two and a half per cent. commission besides the usual bank discount. *Nicholls* v. *Wright*, iv. 700.
18. The drawer of an inland bill is not a competent witness to prove usury, in an action against the acceptor. *Ibid.*
19. If it was the usage and custom of the banks and exchange brokers in that part of the country where the note was made and indorsed, to discount such paper at one per cent. for sixty days, and to charge an additional premium, from a half of one per cent. to one per cent., for exchange on eastern paper, when such paper was loaned; and to charge the like discount and premium for the renewal of the notes given therefor; such a transaction, if *bonâ fide*, and not intended as a cloak for usury, is not usurious. Whether the transaction was *bonâ fide*, is a question of fact to be left to the jury under all the circumstances of the case. *Bradley* v. *McKee*, v. 298.
20. A covenant absolutely to pay a usurious debt directly to the lender, is not a covenant simply to indemnify the surety, although delivered to the surety, but is a security for the usurious debt, especially if the instrument upon its face does not purport to be a covenant to the surety, but an undertaking to pay the debt directly to the lender of the money. A covenant to pay a usurious debt to the creditor is void under the statute of Virginia, although delivered to the surety who was ignorant of the

USURY, (*continued.*)
usury; it being a security for an usurious debt; and a surety who innocently pays the debt, cannot, upon that instrument, recover from the debtor the money thus paid. *Moncure* v. *Dermott*, v. 445.
21. If the cause of action be usurious, no waiver of the objection, by the defendant, *in pais*, will avail the plaintiff. *Ibid.*
22. If a man, in Virginia, *bonâ fide* buy a bond at such a discount that the lawful interest upon the bond will produce him twelve per cent. per annum upon the purchase-money, it is not usury; but if he intended it only as a cloak under which to evade the statute, it is usury. *Ibid.*
23. If there be no loan of money secured, and it be purchased *bonâ fide*, the transaction is not usurious, although purchased at such a discount as to enable the purchaser to obtain an interest of twelve per cent. per annum upon the purchase-money; and although the bond was made to raise money upon, if the purchaser was ignorant of that fact. If the instrument upon which the suit is brought be a security for the usurious debt, it is void by the statute, and the plaintiffs cannot recover, upon it, the money which they, as executors of the surety, paid in satisfaction of such usurious debt, although when they paid it they were ignorant of the usury; and it was not necessary that the defendant should have informed them of the usury, and instructed them not to pay it. *Ibid.*
24. See BANK, 30. *Union Bank* v. *Corcoran*, v. 513.
25. The discount, by a bank, of a note made payable directly to itself, is not usurious; such being the usage of the banks. *Bank of the Metropolis* v. *Moore*, v. 518.
26. The plaintiff is affected by the usury, although he did not know it when he purchased the checks. *Hill* v. *Scott*, v. 523.
27. By the law of Pennsylvania, in case of a loan at a higher rate of interest than six per cent. per annum the plaintiff can only recover the sum actually lent with lawful interest; and the burden of proof is on the plaintiff to show the amount paid by him to the defendant. *Ibid.*

VARIANCE.
1. Variance between the *capias* and the declaration cannot be pleaded to set aside an office-judgment. *Hartshorne* v. *Ingle*, i. 91.
2. A verdict does not cure a variance between the covenant declared upon and the covenant produced on oyer. *Ingle* v. *Collard*, i. 152.
3. In setting forth the forged bill, the omission of the words "account of" is fatal. *United States* v. *Peacock*, i. 215.
4. A material variance, between the record of the recognizance and the recital of it in the *scire facias*, is fatal. *Barnes* v. *Lee*, i. 430.
5. The defendant cannot take advantage of a variance between the writ and the declaration by demurrer without praying oyer of the writ. *Triplet* v. *Warfield*, ii. 237.
6. If a note varies substantially from that described in the declaration, it cannot be given in evidence upon a writ of inquiry. *Farmers Bank* v. *Lloyd*, ii. 411.
7. A note payable in sixty days, "with interest from date," will not support a declaration upon a note payable in sixty days without interest. *Coyle* v. *Gozzler*, ii. 625.
8. A variance, between the declaration and the *capias*, is not a ground for arresting the judgment. *Wilson* v. *Berry*, ii. 707.
9. See BILLS AND NOTES, 169, 170. *Blue* v. *Russel*, iii. 102.
10. If the legal effect of the instrument be the same, whether the words constituting the variance be inserted or not, the variance is not material. *Connell* v. *Milburn*, iii. 424.
11. See BAIL, 79. *Hyer* v. *Smith*, iii. 437.

VARIANCE, (*continued.*)
12. See AGREEMENT, 8. *Tingey* v. *Carroll et al.* iii. 693.
13. See BILLS AND NOTES, 192. *Carrington* v. *Ford*, iv. 231.
14. *Id.* 202. *United States* v. *John Lee*, iv. 446.
15. *Id.* 188. *Stone* v. *Lawrence*, iv. 11.

VENDOR.
1. See FRAUD, 14. *Gilman* v. *Herbert*, ii. 58.
2. *Id.* 17. *Conway* v. *Sherron*, ii. 80.
3. See CONTRACT, 17. *Dunlop* v. *Hepburn*, ii. 86.
4. See ADMINISTRATION, 16. *Greenway* v. *Roberts*, ii. 246.
5. If a deed of land be set aside in equity (after the death of the purchaser and his widow) on account of his fraud, and the purchase-money be decreed to be repaid by the heirs of the vendor to the administrator of the purchaser, to be by him distributed as assets, the widow's second husband is entitled, (as distributee) to his deceased wife's third of the purchase-money thus repaid. *United States* v. *Baker*, ii. 615.
6. See ESTOPPEL, 4. *Corcoran* v. *Brown et al.* iii. 143.

VENUE.
1. An issue, sent by the Orphans' Court to this Court to try the validity of a will, cannot be removed to the other county under the Act of Congress of the 24th June, 1812, § 8. *Carter* v. *Cutting*, ii. 58.
2. The Court has a discretion, upon a motion to change the venue; and will not, in general, change it unless the suggestion be accompanied by an affidavit stating the grounds of belief that an impartial trial cannot be had in the county in which the suit is instituted. *Lewis* v. *Fire Insurance Company*, ii. 500.
3. When the defendant, in a criminal prosecution, has offered himself ready, and has pressed for trial in the county of Washington, the Court will not, afterward, when the cause is called for trial, change the venue, upon the motion and affidavit of the defendant. Under such circumstances it is an application to the discretion of the Court. *United States* v. *H. H. White*, v. 73.

VERDICT.
1. It must appear, upon a special verdict, that the offence was committed before the filing of the information. *Commonwealth* v. *Leap*, i. 1.
2. After verdict it is too late to object the want of a *profert;* or that the action by an administrator is in the *debet* and *detinet*. *Gardner* v. *Lindo*, i. 78.
3. A verdict does not cure a variance between the covenant declared upon and that produced on oyer. *Ingle* v. *Collard*, i. 152.
4. In an action upon a bond conditioned to pay money by instalments, if the verdict be rendered before all the instalments are payable, the jury must find how much is due upon each instalment, and when payable; as well those to become payable, as those already payable. *Davidson* v. *Brown*, i. 250.
5. The Court is not bound to give an opinion instanter on the trial of a cause, but may direct the point to be saved by a special verdict. *Croudson* v. *Leonard*, i. 291.
6. Affidavits of jurymen will not be received to show miscalculation, mistake, or misconduct of the jurors in giving their verdict. *Ladd* v. *Wilson*, i. 305.
7. Upon an indictment for burglary, the jury may find the prisoner guilty of larceny only. *United States* v. *Dixon*, i. 414.
8. See AMENDMENT, 30. *Arguellies* v. *Wood*, ii. 579.
9. See JUDGMENT, 49. *Bank of the Metropolis* v. *Walker*, ii. 361.

VERDICT, (*continued.*)
10. See DAMAGES, 14. *Wood* v. *May*, iii. 172.
11. See FALSE PRETENCES, 21, 22. *United States* v. *Watkins*, iii. 441.
12. Upon a special verdict the Court cannot, from the facts found, infer other facts which the jury might have inferred, but have not found. *Bank of Alexandria* v. *Swann*, iv. 136.
13. See CONTRACT, 37. *Corcoran* v. *Dougherty*, iv. 205.
14. See ASSAULT AND BATTERY, 16. *United States* v. *R. B. Lloyd*, iv. 472.
15. See REPLEVIN, 56, 57. *Walker* v. *Hunter*, v. 462.

VIRGINIA.
1. Virginia had a right to legislate for that part of the District of Columbia which was ceded by Virginia, until the 27th of February, 1801. *Bank of Alexandria* v. *Young*, i. 458.
2. The laws of Virginia in the county of Alexandria are to be considered, in respect to the laws of the United States as common law, that is, not repealed without negative words, or other repugnant provisions upon the same subject. *Quære?* *Sutton* v. *Mandeville*, i. 115.

VOLUNTARY SETTLEMENT.
See EQUITY, 64. *Robinson* v. *Cathcart*, iii. 377.

VOYAGE.
A voyage is not ended until the cargo and ballast are discharged. *Ex parte Sprout & Bailey*, i. 424.

WAGER.
1. See ELECTION, 19. *Denny* v. *Elkins*, iv. 161.
2. A wager may be recovered at common law. *Flemming* v. *Foy*, iv. 423.
3. A wager upon the event of a trial, is void in law. *United States* v. *Lucretia Carrico*, v. 112.
4. See WITNESS, 123. *Ibid.*

WARRANT.
1. A warrant to recover the penalty of a by-law, must name the plaintiffs by their corporate name, and must describe the offence with reasonable certainty. *Barney* v. *Corporation of Washington*, i. 248.
2. A warrant of commitment should state probable cause, supported by oath or affirmation. *Ex parte Burford*, i. 276.
3. A bench-warrant may be issued upon *ex parte* affidavits, before any presentment or indictment by the grand jury, in cases of treason. *United States* v. *Bollman et al.* i. 373.
4. A warrant of commitment must state probable cause, supported by oath or affirmation; must be under seal; and must limit the term of imprisonment. *Ex parte Spraut & Bailey*, i. 424.
5. The word "seal," in a scroll, is a seal to a justice's warrant. *Quære.* *United States* v. *Hedges*, ii. 43.
6. It is an indictable offence to combine to oppose the execution of a warrant issued by a justice of the peace, without knowing the nature of it, and to assault one of the parties attempting to execute it. *United States* v. *O'Neale et al.* ii. 183.
7. See CONSTABLE, 7. *Wells* v. *Hubbard*, ii. 292.
8. The warrant of a justice of the peace for the violation of a by-law, must set forth the offence substantially within the purview of the by-law. *White* v. *Corporation of Washington*, ii. 337.
9. A warrant, for the violation of a by-law, should specify the by-law, and the manner of violating it. So should the judgment. *Boothe* v. *Corporation of Georgetown*, ii. 356.
10. A signature, in black lead pencil, of a warrant by a justice of the peace, is not, in law, a sufficient signature. *United States* v. *Greenberry Thompson*, ii. 409.

WARRANT, (*continued.*)
11. If a warrant contain, on its face, a cause of arrest within the jurisdiction of the magistrate, and purport to have been issued within his local jurisdiction, and be, in other respects, formal, the officer is bound to execute it; and resistance is unlawful, although in fact the offence was not committed within the local jurisdiction of the magistrate. *Ibid.*
12. See By-Law, 21, 22. *Delany* v. *Corporation of Washington*, ii. 459.
13. *Id.* 24. *McGunnigle* v. *Corporation of Washington*, ii. 460.
14. See Judgment, 58. *O'Neil* v. *Hogan*, ii. 524.
15. A warrant of commitment must be under the seal of the committing magistrate, and must show a charge upon oath. *Ex parte Bennett*, ii. 612.
16. See Corporation of Washington, 34. *Corporation of Washington* v. *Lynch*, v. 498.

WASTE.
See Injunction, 21, 22. *Thurston* v. *Mustin*, iii. 335.

WHARVES.
See Corporation of Washington, 13. *Kennedy* v. *Corporation of Washington*, iii. 595.

WIDOW.
See Devise, 6. *Farmers Bank* v. *Hooff*, iv. 323.

WILL.
1. See Legacy, 3, 4, 5. *Foxall* v. *McKenny*, iii. 206.
2. See Orphans' Court, 20. *Carrico* v. *Kerby*, iii. 594.
3. See Freedom, 72. *Negro Emanuel* v. *Ward*, iv. 171.
4. *Id.* 73. *Negro Kitty* v. *McPherson*, iv. 172.
5. *Id.* 76, 77. *Negro Sam* v. *Childs et al.* iv. 189.
6. See Manumission, 12. *Negro Eliza Chapman* v. *Fenwick*, iv. 431.
7. *Id.* 8. *Negro Quando* v. *Clagett*, iv. 117.
8. See Emancipation. *Negro Bacchus Bell* v. *McCormick*, v. 398.
9. See Freedom, 98. *Negro George Coots* v. *Morton*, v. 409.
10. See Devise, 7. *McCoun* v. *Lay*, v. 548.
11. See Appeal, 30. *Newton* v. *Carbery*, v. 626.
12. See Evidence, 575. *Negro Ann Bell* v. *Greenfield*, v. 669.

WITNESS.
1. Diligent inquiry for a subscribing witness will not dispense with his testimony, if it appear that he is within the country. *Broadwell* v. *McClish*, i. 4.
2. Upon indictment for larceny under the Act of Congress, the owner of the stolen goods is a competent witness for the United States, after having released to them his half of the fine. *United States* v. *Clancey*, i. 13; *United States* v. *Hare*, i. 82; *United States* v. *McCann*, i. 207; *United States* v. *Brown*, i. 210.
3. A witness, who for want of surety to appear and testify, has been imprisoned, is entitled to the daily compensation for the time of imprisonment. *Eleanor Higginson's case*, i. 73.
4. A witness who cannot testify in a cause without criminating himself, shall not be sworn. *Neale* v. *Coningham*, i. 76.
5. Upon a trial for larceny, the owner of the stolen goods is a competent witness in chief upon filing with the clerk of the court, for the use of the prisoner, a release of the witness's right to his half of the fine which the Court might impose. *United States* v. *Hare*, i. 82; *United States* v. *McCann*, i. 207; *United States* v. *Brown*, i. 210; *United States* v. *Clancey*, i. 13.

WITNESS, (*continued.*)

6. A *subpœna duces tecum* will not be ordered to the clerk of a court in Virginia, to bring here original papers filed in his court. *Craig* v. *Richards*, i. 84.
7. An instrument can be proved only by the subscribing witness. *Rhodes* v. *Riggs*, i. 87.
8. A slave cannot be a witness if a white man be a party. *Thomas* v. *Jamesson*, i. 91.
9. A slave may be a witness against a free mulatto, in Alexandria county. *United States* v. *Betty Bell*, i. 94.
10. Possession of the goods under one of the parties, is not such an interest as will exclude him as a witness in favor of that party. *Hamilton* v. *Russell*, i. 97.
11. Evidence of the defendant's confession will not dispense with the testimony of the subscribing witness. *Smith* v. *Carolin*, i. 99.
12. The declarations of a witness, not under oath, may be given in evidence to discredit his testimony. *Harper* v. *Reily*, i. 100.
13. Upon an indictment for retailing spirituous liquors, the informer is not entitled to half of the penalty, and is a competent witness. *United States* v. *Voss*, i. 101.
14. In assumpsit for goods sold and delivered, the defendant may prove a partnership between the witness and the plaintiff, by the witness. *Lovejoy* v. *Wilson*, i. 102.
15. The informer is not entitled to half of the penalty upon a minister for marrying a woman under sixteen years of age, without the consent of her parents, &c., and is therefore a competent witness. *United States* v. *McCormick*, i. 106.
16. An attachment for not attending as a witness, must not be served in court; and if the witness arrive before service of the attachment, and makes a reasonable excuse, the Court will countermand the attachment, upon payment of the costs of issuing it. *United States* v. *Scholfield*, i. 130.
17. Manumitted slaves are competent witnesses for or against a free mulatto, in Washington county. *United States* v. *Barton*, i. 132.
18. Leading questions may be asked in cross-examination. *Dawes* v. *Corcoran*, i. 137.
19. A slave is not a competent witness in favor of a free mulatto, in a public prosecution. *United States* v. *Nancy Swann*, i. 148.
20. It is a contempt of court, in the witness, to refuse to answer proper questions before a grand jury; for which he may be fined, and required to give security for his good behavior. *United States* v. *Caton*, i. 150.
21. The defendant's witnesses who were engaged in the riot, will not be permitted to give evidence of their intention in meeting. *United States* v. *Dunn et al.* i. 165.
22. After the jury has returned into court to give their verdict, the Court will not permit a witness to be examined who has come into court since the jury retired. *Riley* v. *Cooper*, i. 166.
23. A witness is not bound to answer a question, the answer to which may tend to criminate himself. *United States* v. *Moses*, i. 170.
24. A person interested in supporting a particular location, is not a competent witness to prove it. *Pancoast* v. *Barry*, i. 176.
25. A witness may be allowed his fees, although not regularly summoned. *United States* v. *Williams & Ray*, i. 178; *Power* v. *Semmes*, i. 247.
26. A creditor of an insolvent estate, is a competent witness to support an action brought by the administrator against a third person. *Talbot* v. *Selby*, i. 181; *Robertson's Administrator* v. *Selby*, i. 211.

WITNESS, (*continued.*)
27. The testimony of a subscribing witness may be dispensed with, if he is absent from the country. *Jones* v. *Lovell*, i. 183.
28. In larceny, the owner of the stolen goods is a competent witness for the United States after releasing to them his interest in the fine. *United States* v. *McCann & Dulaney*, i. 207; *United States* v. *Scipio Brown*, *Id.* 210; *United States* v. *Clancey*, *Id.* 13; *United States* v. *Hare*, *Id.* 82; *United States* v. *Frank Tolson*, *Id.* 269; *United States* v. *Morgan*, *Id.* 278; *United States* v. *Shorter*, *Id.* 315.
29. A witness cannot have an attachment for his fees until he has served an order of Court upon the party to pay them. *Sadler* v. *Moore*, i. 212.
30. Counsel may testify as to facts not confidentially communicated to them by their clients. *Murray* v. *Dowling*, i. 151; *Bank of Columbia* v. *French*, i. 221.
31. The maker of a note is a competent witness for the indorser. *Ibid.*
32. The grantor of a deed, collaterally introduced, is a competent witness to prove that the deed was fraudulently obtained. *Ibid.*
33. A free negro is a competent witness against a free white man. *Quære?* *United States* v. *Fisher*, i. 244.
34. If the subscribing witness to a note be not within reach of the process of this Court, it is not necessary to produce him, or to prove his handwriting; but the defendant's handwriting may be proved. *Welford* v. *Eakin*, i. 264.
35. Slaves are competent witnesses for free negroes indicted for assault and battery. *United States* v. *Negro Terry*, i. 318.
36. A mere honorary obligation to indemnify a prosecutor who is liable for costs, is not a sufficient interest to exclude the testimony of the witness. *United States* v. *Lyles*, i. 322.
37. This Court has power to send an attachment into Virginia for a witness, in a civil cause, who lives within one hundred miles of the place of trial; and such attachment is to be directed to and served by the marshal of the District of Virginia. *Voss* v. *Luke*, i. 331.
38. If there be judgment for one of several defendants, upon a demurrer to his separate plea of bankruptcy, he may be examined as a witness for the other defendants, upon executing a release of his interest in his estate. *Hurliki's Administrator* v. *Bacon et al.* i. 340.
39. The Court will not continue a cause for the absence of a witness who has been summoned, and who lives within one hundred miles of this place, if no attachment has been moved for, although he lives out of this district. *Woods et al.* v. *Young et al.* i. 346.
40. The Court will not compel a witness to testify against his interest, in a cause in which he is interested. *Carne & Slade* v. *McLane*, i. 351.
41. A deposition *de bene esse* cannot be read in evidence if the witness lives within one hundred miles of the place of trial, although he lives out of the district. *Park* v. *Willis*, i. 357.
42. *Quære*, whether this Court can issue an attachment for a witness residing in Virginia, less than one hundred miles from this district. *Lewis* v. *Mandeville*, i. 360.
43. The defendant's office-keeper is a competent witness for the defendant, because he is equally liable to the action of either party. *Harrison* v. *Evans*, i. 364.
44. The Court will not grant an attachment against a party for not paying his witness, unless payment shall have been demanded by a person having authority to receive payment; and that authority must appear. *Nally* v. *Lambell*, i. 365.
45. If it appears, upon cross-examination, that the witness is interested, the Court will instruct the jury that his testimony is not evidence. *Brohawn* v. *Van Ness*, i. 366.

WITNESS, (*continued.*)

46. A free colored man born of a white woman is a competent witness against a white man. *Minchin* v. *Docker*, i. 370.
47. Evidence that a black man has for many years publicly acted as a free man, and been generally reputed to be free, rebuts the presumption of slavery arising from color, and is evidence that he was born of a white woman. *Ibid.*
48. A slave is a competent witness for a free black man, on a criminal prosecution. *United States* v. *Shorter*, i. 371.
49. A witness is not competent to testify as to the similarity of handwriting, who has only seen, for a few minutes, papers acknowledged by the defendant to be in his handwriting. *United States* v. *Johnson*, i. 371.
50. *Quere*, whether a person who has declared his disbelief of a future state, is a competent witness, and whether such declarations can be given in evidence to prevent the witness from being sworn and examined. *Rutherford* v. *Moore*, i. 404.
51. A witness bound by recognizance to appear at a particular term, is not bound by that recognizance to appear at the following term, unless his recognizance be respited, although the cause should be continued. *United States* v. *Butler*, i. 422.
52. If a subscribing witness has not been inquired for at the place to which he was last traced, evidence of his handwriting cannot be admitted. *Cooke* v. *Woodrow*, i. 437.
53. A witness must answer whether he saw the defendant at a public gaming-table, inasmuch as the answer cannot criminate, nor tend to criminate, the witness himself. *Ex parte Lindo*, i. 445.
54. If several persons jointly concerned in an assault and battery, be separately indicted, each as for his own offence, and all tried at the same time, by the same jury, one of the defendants may be examined as a witness for the others. *United States* v. *Hunter*, i. 446.
55. The owner of goods, stolen by a slave, in Alexandria county, is not a competent witness for the prosecution; because he is entitled to one half of the fine which the Court must impose under the act of Congress. *United States* v. *Milly Rhodes*, i. 447.
56. The Court will grant a rule on a witness residing in Baltimore, to show cause why he should not be attached for not attending according to summons. *Hodgson* v. *Butts*, i. 447.
57. The Court will send attachments into Maryland, for witnesses who reside within one hundred miles of Washington, if they fail to attend according to summons. *Sommerville* v. *French*, i. 474.
58. The plaintiff's clerk who puts a letter into the post-office, is a competent witness for the plaintiff, without a release, in an action against the post-master for the loss of the letter. *Dunlop* v. *Monroe*, i. 536.
59. This Court will not grant a commission, in a civil action at common law, to take the deposition of a witness residing in Virginia within one hundred miles of the place of trial; because he may be summoned to attend personally. *Wellford* v. *Miller*, i. 485.
60. The person in whose favor a letter of guaranty has been given, may be examined as a witness for the plaintiff in an action upon the guaranty; his declarations, therefore, cannot be given in evidence. *Reid et al.* v. *Hodgson*, i. 491.
61. It is not necessary that the handwriting of a party should be proved by a person who has seen him write. *Ibid.*
62. If the testimony of a subscribing witness cannot be had, evidence may be given of his handwriting; and it is not necessary that the jury should be satisfied of the handwriting of the subscribing witness, if they are satisfied as to that of the maker. *Cook* v. *Neale*, i. 493.

WITNESS, (*continued.*)

63. The principal obligor in a bond is a competent witness for the surety. *Harper* v. *Smith*, i. 495.
64. Citizens of Alexandria are competent witnesses in an action of debt for the penalty of a by-law of the corporation. *Common Council* v. *Brockett*, i. 505.
65. Free born negroes, not subject to any term of servitude by law, are competent witnesses in all cases. Color alone is no objection to a witness. *United States* v. *Mullany*, i. 517.
66. A slave is not a competent witness against a free born mulatto not subject to any term of servitude by law. *United States* v. *Peggy Hill*, i. 521.
67. If a cause be postponed for two or three days, witnesses attending from Baltimore will be allowed payment for those days. *Hance* v. *McCormick*, i. 522.
68. The two jurors first sworn in a cause are the proper triers of a challenge for favor. *Negro Clem Joice* v. *Alexander*, i. 528.
69. The challenged juror cannot be examined as a witness to the triers. *Ibid.*
70. Witnesses may be separated and examined, each out of the hearing of the others. *Ibid.*
71. The Superintendent of Washington City is a competent witness for the plaintiffs in a suit brought in the names of the former commissioners to whose rights he has succeeded. *Thornton* v. *Stoddert*, i. 534.
72. A subscribing witness to a deed, in Alexandria county, may be compelled to attend the Court to prove its execution, so that it may be recorded. *Irwin* v. *Dunlop*, i. 552.
73. The prosecutor, whose name is written at the foot of the indictment for a misdemeanor in Alexandria county, is not a competent witness for the prosecution. *United States* v. *Birch*, i. 571.
74. The wife of one of the defendants is not a competent witness for the plaintiff, although her husband has been discharged under the insolvent act. *Bank of Alexandria* v. *Mandeville*, i. 575.
75. A creditor of a firm is a competent witness to prove its existence; so is a stockholder of a company who holds stock in the plaintiff's bank. *Ibid.*
76. The Court will not, in a civil suit, attach a witness who lives more than 100 miles from the place of trial; nor issue a *subpœna* commanding him to go and testify before a magistrate. *Henry* v. *Ricketts et al.* i. 580.
77. In an action for the use of a county, inhabitants of the county are competent witnesses for the plaintiff. *Governor of Virginia* v. *Evans et al.* i. 581.
78. The principal obligor is a competent witness for the sureties upon a collateral issue. Where the defendants plead separately in an action upon a bond with a collateral condition, the principal obligor is a competent witness for the sureties; and so, one surety is a competent witness for another surety; but the sureties are not competent witnesses for the principal. *Ibid.*
79. If a witness be a surety for costs, the Court will permit other security to be substituted, so as to remove the interest of the witness. *Ibid.*
80. The mother of a bastard is a competent witness for the United States, on an indictment of the supposed father, under the Maryland Act of 1781, c. 13, and may be cross-examined as to her connection with other persons. *United States* v. *Collins*, i. 592.
81. On an indictment for bigamy, a person who has an action pending against the prisoner for goods furnished to the supposed first wife, is not a competent witness to prove the first marriage. *United States* v. *Maxwell*, i. 605.
82. Witnesses cannot be sent to the grand jury on the part of the accused; nor can a grand juror, after he is sworn, be withdrawn for a cause which existed before he was sworn. *United States* v. *Palmer*, ii. 11.

WITNESS, *(continued.)*

83. Witnesses may be removed while others are being examined. One joint defendant in an action of *assumpsit* cannot confess judgment so as to enable him to testify in behalf of the other defendants. If several actions against several underwriters upon the same policy, are submitted to the same jury, at the same time, and the jury find verdicts against some of them, and wish to consider further as to the others, those underwriters, against whom verdicts were found, cannot be examined as witnesses for the others. *Patton* v. *Janney*, ii. 71.
84. See ADMINISTRATION, 12. *Thompson* v. *Afflick*, ii. 67.
85. See EVIDENCE, 1 – 186.
86. See EVIDENCE, 471, 419. *Patriotic Bank* v. *Coote*, iii. 169.
87. A colored man is not a competent witness in Alexandria, against a colored man indicted jointly with a white man for a riot. *United States* v. *James Birch et al.* iii. 180.
88. By the law of Maryland, witnesses can be permitted to testify upon affirmation only when they are members of some religious society who profess to be conscientiously scrupulous of taking an oath. *Bank of Columbia* v. *Wright*, iii. 216.
89. The person whose paper is forged, is a competent witness for the prosecution. *United States* v. *Brown*, iii. 268.
90. See EVIDENCE, 431. *Bank of United States* v. *Washington*, iii. 295.
91. See GAMING, 16. *United States* v. *Strother*, iii. 432.
92. Before a witness can be admitted to testify upon affirmation instead of an oath, the Court must be satisfied that he is one of a society who profess to be conscientiously scrupulous of taking an oath. If the witness is considered by the society of Quakers, as a member of that society in principle and religious profession, and usually meets with them for religious worship, and has applied to be admitted to a full participation of all the civil privileges, and the moral discipline of the society, he may be permitted to testify upon solemn affirmation instead of an oath. *King* v. *Fearson*, iii. 435.
93. See CHALLENGE, 25. *United States* v. *Watkins*, iii. 441.
94. A witness is not bound to answer before the grand jury, a question, the answer to which might implicate himself; and he is the sole judge whether it will. The Court is to decide whether the answer could implicate the witness. *Sanderson's case*, iii. 638.
95. See EVIDENCE, 43. *Bank of Alexandria* v. *McCrea*, iii. 649.
96. See SLAVE, 103. *United States* v. *Charity Gray*, iii. 681.
97. See EVIDENCE, 458. *Hilton* v. *Beck*, iv. 107.
98. See DEPOSITION, 59. *Gustine* v. *Ringgold*, iv. 191.
99. See SPECIAL SESSION, 2. *United States* v. *Christiana Williams*, iv. 372.
100. See BILLS AND NOTES, 202. *United States* v. *Lee*, iv. 446.
101. A witness is not incompetent because he feels bound in honor to indemnify the party who calls him as a witness, in case the judgment should be against him, if he has made no promise to indemnify him, nor is bound, in law, so to do. *Corporation of Washington* v. *Fowler*, iv. 458.
102. See EVIDENCE, 486. *United States* v. *Anderson*, iv. 476.
103. *Id.* 487. *United States* v. *Masters*, iv. 479.
104. *Id.* 488 to 493. *United States* v. *Woods*, iv. 484.
105. *Id.* 498. *Wallar* v. *Stewart*, iv. 532.
106. *Id.* 499. *Bank of the United States* v. *Davis*, iv. 533.
107. See ATTACHMENT, 95. *Ex parte Gorman*, iv. 572.
108. See EVIDENCE, 502. *United States* v. *Davidson et al.* iv. 576.
109. *Id.* 503. *United States* v. *Jackson*, iv. 577.
110. A mulatto born of a white woman, and not in a state of servitude by law,

WITNESS, (*continued.*)
is a competent witness for a white man. *United States* v. *Davis*, iv. 606.
111. Serving out the term of imprisonment in the penitentiary for felony, does not restore the party to his competency as a witness. *United States* v. *Brown*, iv. 607.
112. See JOINT DEFENDANTS, 15. *United States* v. *Campbell et al.* iv. 658.
113. See ASSAULT AND BATTERY, 20. *United States* v. *Fitton*, iv. 658.
114. Free negroes and mulattoes, not born of white women, are not competent witnesses against free negroes and mulattoes not in a state of servitude by law. *United States* v. *Negro Beddo et al.* iv. 664.
115. See EVIDENCE, 508. *United States* v. *Fenwick et al.* iv. 675.
116. *Id.* 509. *United States* v. *Tarlton*, iv. 682.
117. *Id.* 511. *United States* v. *Crandell*, iv. 683.
118. See NEGLIGENCE, 5. *Beltzhoover* v. *Stockton*, iv. 695.
119. See USURY, 17. *Nicholls* v. *Wright*, iv. 700.
120. Upon trial of an indictment against the husband for assault and battery upon his wife she was permitted to testify against him upon the authority of *Fitton's case*, at November term, 1835. *United States* v. *Negro Smallwood*, v. 35.
121. See SLAVE, 142. *United States* v. *Negro Priscilla West*, v. 35.
122. See EVIDENCE, 529 – 533, 535. *United States* v. *Richard H. White*, v. 38.
123. A witness cannot be rejected because she has been provoked to bet upon the event of the trial. *United States* v. *Lucretia Carrico*, v. 112.
124. See BILLS AND NOTES, 212. *White* v. *Burns*, v. 123.
125. *Id.* 217. *Bradley* v. *Knox et al.* v. 297.
126. A witness upon cross-examination, is not to be questioned as to any facts tending to disgrace him, which the party would not be permitted to prove *aliunde*. *United States* v. *Hudland*, v. 309.
127. See SENTENCE, 2. *United States* v. *Farrell*, v. 311.
128. Free colored persons, not born of white mothers, are not competent witnesses against a colored person born of a white woman. *United States* v. *Beddo*, v. 378.
129. See BILLS AND NOTES, 219. *Mason* v. *Mari*, v. 397.
130. See AUTHORITY, 7. *Welch* v. *Hoover*, v. 444.
131. See EVIDENCE, 554 – 557. *United States* v. *R. H. White*, v. 457.
132. A person who borrows checks payable to bearer to raise money upon for his accommodation, but has not indorsed them, is a competent witness for the defendant to prove usury. *Hill* v. *Scott*, v. 523.
133. See FREEDOM, 99. *Thomas* v. *Mackall*, v. 536.
134. See EQUITY, 138 – 141. *Walker* v. *Parker*, v. 639.

WRIT OF INQUIRY.
1. In executing a writ of inquiry in Alexandria, the plaintiff's own affidavit may be read in evidence of the amount of damages. *Keene* v. *Cooper*, ii. 215.
2. See VARIANCE, 6. *Farmers Bank* v. *Lloyd*, ii. 411.
3. See JUDGMENT, 76. *Reiling* v. *Bolier*, iii. 212.

END OF GENERAL INDEX.